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By JOSEPH HARRISON of Lincoln's Inn, Efg;

In Two Columes.

VOL. II.

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PRACTICE

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Court of Chancery.

CHAP. I.

Of interrogatories, and commissions to examine.

Nterrogatories are questions exhibited in writing by the party, plaintiff, or defendant, or directed by the court, to be proposed to and asked of the witnesses in a cause touching the merits thereof, or some incident therein. Also interrogatories are touching contempts of writs, processes and orders of court, whereupon the party offending is to be examined concerning such contempt,

As on hearings upon bill and answer, no evidence is to be admitted (except matters of record) but what arises from the bill and answer itself; so when the parties proceed to the examination of witnesses, the cause is determined by such evidence as arises from the depositions of witnesses examined upon interrogatories. And both the plaintiff and defendant Vol. 11.

may ordinarily exhibit interrogatories; for when parties are at iffue, it is necessary to consider, as well what the other side may examine unto, as what ourselves can prove, and so counter or cross interrogatories may be prepared, if there be occasion.

Where interrogatories are exhibited in the examiner's office, and witnesses examined thereon, either party may, without application to the court, or order for that purpose, exhibit one or more interrogatories, or a new fet of interrogatories, for further examination of the same or other witnesses: but where the commission is taken out for examination, there no new interrogatories, or fet of interrogatories, can be exhibited without motion or order of the court. And the reason of the difference was faid to be, because the examiner is an officer of credit and fworn, and fo prefumed to be impartial, and that he will not disclose the depositions to either party; but the commissioners are private persons, and not fworn, and are called the plaintiff's commissioners or defendant's commissioners; and so without leave of the court no new interrogatories can be added before them. Gilb. 42.

But this practice is altered by an order made 8 Geo. 1. which enacts, That all commissioners and their clerks, before they act in the commission, shall severally take an oath not to publish or disclose the contents of the depositions to be taken; which oath is to be annexed in a schedule to the commission; and also in all commissions which shall issue to examine witnesses, a clause to that effect is to be added, and made part thereof; and any commissioner or clerk acting contrary to the premisses, on proof of the offence shall be punished as the court shall

think fit to adjudge and order.

When the parties have copies of the depositions delivered to them, and come to see the interrogatives exhibited by each side, and find the interroga-

tories

tories to be too leading or impertinent, then is a proper time to refer them to a Master for being too leading, impertinent or fcandalous. This is done by motion or petition of course. If the Master reports the interrogatories leading, and this report is not excepted to, then all the depositions taken to these interrogatories must stand suppressed as of course by motion or petition: But if the report is excepted to, as on the one hand the court never countenances leading or impertinent interrogatories, fo on the other hand they are not over curious in these matters, because it may fall out, that interrogatories may be reported illegal in the very vital of the examination and on the very point the cause turns; and when this comes to be the case, the party who refers them gains his end; for perhaps he had a very bad cause if the depositions had stood; whereas if they are suppressed he has a very good one, fince his adversary must hear the cause without any proof at all; unless the court is pleased to grant him another commission on payment of costs for his leading interrogatories; which is feldom or never done after depositions are published. And it is hard, that in equity a man should be deprived of a plain right through the flip of another man's pen, or the inadvertency or unskilfulness of his counsel penning his interrogatories; and therefore if it is possible for the court to help him they will, from the manifest inconvenience which must attend such a case. Indeed, if interrogatories are reported leading in points upon which the gift of the case does not turn, and, if the depositions in these parts should be fuppressed, the party might have evidence left without it, there is no hurt done; but if the life and quintessence of the cause turns upon it, he ought to struggle to the last before his depositions are suppreffed.

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N. B. New interrogatories were ordered to be exbibited on suppressing the old. In this case the interrogatories, and the depositions of witnesses taken on them, had been suppressed, for that the interrogatories were leading, and then publication passed. And now the court was moved, that a new fet of interrogatories might be drawn and fettled by the Master, for the examination of this witness, whose evidence was very material, and yet must be wholly lost, if the court would not indulge them this way; and though the practice has been always against it, and it was infifted to be of dangerous consequence; yet one precedent being produced to this purpose, and the interrogatories which had been suppressed were fuch as might have been drawn by many other counsel, without any apprehension of their being leading; the court to let in the party to the benefit of this witness's testimony, ordered new interrogatories to be fettled by a Master, and put in for his examination over again. Spence versus Allen, Gilb. 150. Abr. Eq. Ca. 232. S. C.

All interrogatories must be drawn, or perused and signed by counsel; and they are to be short and pertinent, and necessary to the point: They must not be leading, as, Did you not do, or see such a thing? &c. If they are such, the depositions taken thereon will be suppressed; and so it is where the interrogatories are too particular, or point to one

fide of the question more than the other.

They must be ingrossed on parchment with double 12 d. stamps, and are to be exhibited before any witnesses examined on either side: And if witnesses are to be examined before an examiner of the court, the interrogatories must be produced before, and left with him at the office: If in the country on a commission, the interrogatories may be exhibited before the commissioners on opening the commission, which is now the general practice.

Though

Though it is faid that heretofore the interrogatories were always included in the commission. Vide Ord.

Chanc. 216, 217.

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When witnesses are examined in court upon a schedule of interrogatories, there shall be no new interrogatories put in to examine the same witnesses: But new interrogatories, by leave of the court, may be exhibited in court for examining new witnesses at any time before publication, notwithstanding there has been a joint commission executed in the country. And on a supplemental bill, the court will, upon motion, give leave to add to the first interrogatories, so as the new interrogatories contain nothing but what relates to the supplemental matter. Ord. Chan. 126.

No re-examination of witnesses is allowed, the upon the same interrogatories, without leave of the court: Ent if either party have a commission de novo, after he hath examined on a former, he must examine on the same interrogatories as were exhibited by him on the former commission; and no other interrogatories can be admitted without an order, or consent of parties.

If leave is given to examine a witness after publication, and before hearing, a Master is commonly ordered to settle the interrogatories, and that they may be to such points only as were omitted before, and as are now ordered to be examined unto; unless it be merely to prove an exhibit, and the in-

terrogatory was before filed.

And all interrogatories for proving particular points needful upon a reference to a Master, shall be directed by the Master, and shall be to such

points only.

And though, by the orders of the court, the parties are to make their full proof before publication and hearing of the cause; yet after hearing, if there be a reference to a Master for the stating an

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account

account, or fuch like matter, and he shall find any particular points and circumstances needful to ground his report upon, which are not fully proved, nor could properly be examined to before the hearing of the cause, he may direct the parties to draw interrogatories to fuch points or circumstances only; and fuch witnesses are usually examined before such Master upon such interrogatories, if the witnesses be or reside within ten miles of London; but if farther off, and the parties defire it, he may by his cert ficate direct a commission into the country, which is to be made out by the plaintiff or defendant's clerk that defire fuch commission: And on the return of such commission, publication shall forthwith pass according to the course of the court. Vide Ord. Chan. 156.

But the more common way now is, not to examine to a matter of account before hearing, but after, before a Master, if the witnesses be in town or near; if not, then by commission to be directed by the Master upon his certificate: And either party may examine witnesses to an account, or to a par-

ticular thing, after hearing.

In case of a prosecution of a contempt for breach of an order of court, or otherwise grounded upon an affidavit, the interrogatories shall not be extended to any other matter than what is comprehended in the said affidavit or order. And if any other shall be exhibited, the party examined may for that reason demur unto them, or resule to answer them.

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course of

HIS writ is either to examine the parties, or the court is witnesses; or others, as contemners, &c. must necesta-A commission to examine witnesses is sometimes rily be dito examine them to the cause, i. e. as to the merits refered at the hearing, thereof, or to some particular point in question; or a comit may be to examine them touching a contempt, or mission shall the breach of some order of court, &c. Examina-granted betion to the cause is generally before hearing, tho' fore the hearing to fometimes it may be after hearing, as upon an ac-examine count referred to a Master, or upon new matters witnesses arifing at the hearing.

delay the A commission is also often had to examine wit- account dinesses in perpetuam rei memoriam, touching which refled; and the proper fee hereafter, p. 22; and also vide ante Bilis. time to ap-

At other times it is to examine witnesses beyond ply for such fea, and then if they be foreigners, or natives, to commission is, after the examine them on their oaths, and the oaths of skil-account directed .ful interpreters.

And when each commission is executed, one of fed though the commissioners, or person that received it from consented to one or more of the commissioners, must deliver the go to hearcommission executed into the Master's publick office fame time here in England, and make the usual oath, that be as if the received it from the hands of one or more of the com- had not missioners, and that the sime bath not been open'd nor been grant-ed. Barn. alter'd since be so receiv'd it. But if one of the com- 193. missioners brings over such commission, he need make no oath, but the plaintiff or defendant's clerk in court only indorfes the day, month, and year, on fuch commission, and underneath writes, By the bands of A. B. one of the commissioners.

Though a cause be only matter of account, which may be, and generally is, examined to after hearing; yet where a defendant defires a commission before hearing, the court always grants it, as being what he has a right unto.

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And

And though this commission to examine witnesses is not ordinarily to be granted till the cause be at issue; yet if a witness be very aged or sick, upon making an affidavit thereof, the court will some-

times order it de bene esse even before answer.

After you have joined and struck commissioners names with the defendant's clerk in court, you proceed to make out a joint commission to examine; but if the defendant's clerk in court fails to join and strike commissioners names, being served with an order and subpana to rejoin, for that purpose, you may then make out a commission ex parte, directed to your own commissioners; in which case no notice of its execution need be given to the other side.

But if the defendant rejoins gratis, or the parties go to commission by consent, there needs no subpana

to rejoin.

The first taking out and carriage of the commission is regularly the privilege of the plaintiff; but the court will sometimes indulge the defendant with a duplicate, because in case the plaintiff resuses to give notice of the executing thereof, and does not intend to execute it; then the defendant may make use of his duplicate, and proceed to examine witnesses by virtue thereof: And this duplicate is the rather granted if it is doubtful whether the plaintiff will execute his commission or not; and more especially if he be forced on by the defendant, as in an injunction cause, where delay is only designed: And sometimes this duplicate is granted by consent.

If the witnesses for the defendant live far distant from the plaintiff's, as fixty or eighty miles, or beyond the seas, where the plaintiff hath none; in this case the desendant may have a commission for examining his witnesses only, and have the carriage thereof: But the plaintiff may join in such commission, and cross examine the desendant's witnesses

on the plaintiff's interrogatories, or examine what other witnesses he pleases on such commission.

If when a cause is at issue, the plaintiff will not go on to commission, the defendant may by order have a commission to examine his own witnesses, and shall have the carriage thereof. And so if the plaintiff commit any abuse in the execution of the first commission, the defendant shall have the carriage of the second.

Also where a commission lost, by the fault of him who had the carriage of it, is renewed, the

other fide fometimes hath the carriage of it.

Observe, That the examiners have a right to examine all witnesses in town, or within ten miles of the town, which is the circuit of the court; and if any commission be made, or witnesses examined within that district, the depositions taken by commission will, upon complaint, be suppressed, and the clerk who made out the commission will stand committed for a misselaviour and a breach of the known duty of his office.

No commission can be executed in Term time,

unless by leave of the court, or by consent.

All commissions for examination of witnesses are to be made returnable on one of the returns in or before the Term, unless where the parties agree to have it without delay, or an order is obtained for that

purpose. See Mosely, 176.

He who has the carriage of the commission must give fourteen days notice under his commissioners hands of the time and place for executing the commission; and such notice must be given to all the defendants, who join in such commission; otherwise it is not good notice, and the depositions may be suppressed for irregularity. But personal notice is not necessary: And in default of notice the court will grant the other side a new commission, or in

cale

case of the plaintiff's refusing to give notice, the defendant having a duplicate may use it. And if notice is directed to be given to a person you cannot find, then on affidavit thereof and filing it, you may on motion or petition obtain an order for a Master

to appoint time and place.

If two of the plaintiff's commissioners attend at the time and place appointed, they may proceed therein ex parte, though the defendant's commissioners fail to attend; but if the defendant's commissioners attend, and not the plaintiff's, they cannot go on; because the plaintiff, having the carriage of the commission, will not produce it, if he is disappointed of his commissioners; which makes a duplicate thereof more necessary, for then the defendant's commissioners may proceed in executing the duplicate.

But where no duplicate is, but defendant's commissioners attend at the time and place appointed, and not the plaintiff's, the defendant is to have costs, occasioned by the defendant's commissioners and witnesses attending at the place appointed; and the court will permit him to sue out another com-

mission, and order him the carriage thereof.

Where one commissioner met on each side, and the plaintiff's commissioner went away without doing any thing, whereby the commission was lost, the court ordered the plaintiff to pay the defendant his costs, and granted a new commission, and the defendant the carriage thereof; for one commissioner on a side is sufficient, and one at least on each side must attend.

The commission being opened and read, both parties are then obliged to exhibit their interrogatories, if they intend to examine any witnesses: And the interrogatories on both sides are to be signed by all the commissioners then present; and consequently

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ntly if if the plaintiff exhibits his interrogatories, and the defendant neglects to exhibit any, and his commissioners attend the execution of the commission, whereby they have an opportunity of feeing and hearing every thing that is proved on the plaintiff's part, and yet perhaps all this while they have exhibited no interrogatories; and after all this it often falls out, that the defendant moves the court for a new commission, upon suggestion that he had no opportunity of examining his witnesses at the last commission; and if it shall appear by affidavit or certificate of the plaintiff's commissioners, that the defendant's commissioners attended during the whole time of the execution of the commission, and never exhibited any interrogatories; in this case the court will, but very rarely, and that upon special circumstances, grant the defendant another commission. Vide 1 Chan. Ca. 274. But if he has put in interrogatories, and his commissioners attend without examining any witnesses, the court may grant or deny him another commission, as the circumstances on the affidavit of the commissioners shall appear; his commissioners ought to withdraw, and care must be taken, if new commission is granted, that neither party add to, nor alter their interrogatories: They must examine to the old interrogatories exhibited at the former commission, and are not to add new ones without the special leave of the court; and then they are to be settled by the Master, and are never suffered but in extraordinary cases, and the party praying this commission must pay all the charges thereof, unless the other side examines any witnesses of his own; in which case he is to bear the part of the charge

If notice be given of executing the commission, and at the day appointed the commission is opened, but nothing done thereupon, nor any adjournment

made

made, the commission is lost, except the other side agree to adjourn, or to take new notice: But if the commission be not opened, and he who has the carriage thereof gives new notice, and then executes it, this is a sufficient execution, unless in the mean while the other side obtain and serve an order to stay proceedings till the costs of the former attendance of the defendant's commissioners and his witnesses be paid, and that they are not paid.

It is usual, when an adjournment is made, to make a memorandum thereof, which the commis-

fioners are to fign.

If by default of him that has the carriage of the commission nothing is done thereon, he shall bear the charges the other side is put to about it, either for sees of court, bringing or retaining commissioners or witnesses, or otherwise, to be ascertained by the oath of the party, or him that disbursed the money for him, and shall renew the commission at his own costs. Ord. Chan. 132.

Where a commission is lost by the fault of him who had the carriage of it, and is renewed, the

other fide commonly hath the carriage of it.

And if a commission become void by the error of the clerk in making it, the costs, I think, shall generally be born by him and that side for whom it was taken out, and who had the carriage of it.

After due notice has been given, if the one fide produces and examines all his witnesses, and the other side does not, but prays a new commission; if it be granted, he that prays it shall bear all the charges of such renewed commission, both in the court and in the country, and as well for the other's commissioners as his own; and the other side shall be permitted to cross examine the witnesses produced by him that renews the commission. But if the other side will examine any witnesses of his own,

then

then he shall bear his own part of the charge. The charges abovementioned to be ascertained by the oath of the party, or of him who disbursed the

money for him. Ord. Chan. 132.

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He, at whose instance a commission is renewed after a former commission executed and returned, and he by the default of whom, or of whose commissioners, a former commission was not executed, and it is thereupon renewed, shall at his peril examine all his witnesses on that renewed commission, or shall examine them in court by the end of the Term it is returnable, without any more or further delay. Ord. Chan. 133.

Proceed we now to instance some particular cases

proper to be taken notice of under this head.

After the defendant has been examined on interrogatories, and publication passed, the plaintist ought not to have a commission to examine witnesses in order to falsify the defendant's examination; this tending to multiply causes, and to make them endless. 3 Will. Rep. 413. Smith v. Turner.

If a defendant is to perfect his answer upon interrogatories, or to be examined for a contempt, although the rule of court be, that he shall be examined in four days, or stand committed; yet if the party be in the country, he shall have a commission to take his examination. I Vern. 187.

A new commission will be granted, if exhibits or writings are alter'd or interlin'd. Hill. 25 Car. 2.

Richardson and Lowther, 1 Chan. Ca. 273.

But where a witness alledged that he had mistaken himself at a commission; the commission being returned, he came to London, and made an affidavit that he was surprized; upon which a special commission issued to re-examine the witnesses, which was done accordingly: But this special commission was suppressed by motion, by advice of the Master of the Rolls with the Six clerks, as contrary to the

(a) But the the (a) course of the court. Ranaal against Richpresent practice is, to ford, 1 Chan. Ca. 25. Eq. Ab. 102. (A.) c. 3. Nel.
obtain an C. R. 92. S. C.
order, on

motion and

affidavit of surprize, to have the witnesses examined viva voce in court, or his depositions amended, the witnesses being first examined before an examiner; but when he is examined in court, or when his depositions are read, the order for that purpose must be produced in court.

If after publication any new matter arises upon debate, or hearing the cause, which may be thought material by the court, a new commission may be

granted. 2 Chan. Ca. 75.

A commission may be had to examine witnesses beyond sea; and if foreigners, to examine them upon their oaths, and also the oaths of skilful interpreters. In this case, when it is apprehended the returning by a commissioner, or by some person that can make affidavit of the true keeping of it, will be too great delay, the court fometimes has ordered that a commission be delivered by a Master to send by the post, and that he receive the same back when it is executed, by the post, if it be returned; otherwise one of the commissioners personally delivers the commission to the person that brings it to England, to the intent that when arrived here, he may take the usual oath, viz. That he had it from the hands of one of the commissioners, and that the fame has not been opened or altered.

A general affidavit of having material witnesses beyond sea, is not sufficient for a new commission; but the witnesses must be named in the affidavit; and the point mentioned to which they can mate-

rially depose. I Vern. 334.

The ground for granting a commission beyond fea to examine witnesses, must depend upon the special circumstances of the case.

Where there shall be faid to be sufficient circumflances arising from the nature of the case, upon which which a commission for examining witnesses beyond sea ought to be granted, vide Barnard. 193, 194.

If commissioners misbehave themselves, the court will grant an attachment against them; but regularly a commission cannot be suppressed, but upon a reference and certificate of irregularity. Cary 43.

If commissioners missehave themselves, or if the commission is executed contrary to notice, or not due notice given, or the depositions returned are so badly ingrossed, or interlined, that they are not legible; in this and many other cases of the like nature there may be good reason to suppress the depositions; but in this last case the record or ingrossement of the depositions is brought into court by the proper officer, and the court takes the ingrossent into their hands; and if it is possible to be read, or if being handed down to the clerk he can read it, they will hardly suppress the depositions, and put the party to new trouble of examining over again.

A commissioner may be examined as a witness; but then he must be first examined; and if others be examined before him in his presence, he cannot be examined afterwards, having heard the former depositions; and for that reason a commissioner was examined in court, his former deposition being suppressed. 2 Chan. Ca. 79. But after he is examined, he may then join, and proceed in executing the commission.

When a commission is returnable without delay, if it be within this kingdom, [if made out in the Vacation-time at any of the seals after the Term] it must be returned by the second return of the next Term; if executed afterwards, it is void, and the depositions ought to be suppressed. 2 Vern. 197.

But observe, that if a commission be made out the first or second seal before the Term, or the first day of Term, returnable without delay, the same return holds good to the end of that Term.

A commission to examine witnesses.

GEORGE the third, &c. To ____ greeting: Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give unto you, any three or two of you, full power and authority, diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you, as well on the part of A. B. complainant, as on the part of C. D. defendant, or of either of them; and therefore we command you, any three or two of you, that at certain days and places to be appointed by you for that purpose, you do cause the said witnesses to come before you, and then and there examine each of them apart upon the faid interrogatories, on their respective corporal oaths first taken before you, any three or two of you, upon the Holy Evangelifts, and that you do take fuch their examinations, and reduce them into writing on parchment; and when you shall have so taken them, you are to fend the same to us in our Chancery—wherefoever it shall then be, closed up and under your feals, or the feals of three or two of you, diffinctly and plainly fet, together with the faid interrogatories, and this writ. And we further command you, and every of you, that before you act in or be present at the swearing or examining any witness or witnesses, you do severally take the oath first specified in the schedule hereto annexed; and we do give you, any three, two, or one of you, full power and authority, jointly or feverally, to administer such oath to the rest, or any other of you, upon the Holy Evangelists. And we further command, that all and every the clerk or clerks, employed in taking, writing, transcribing or ingrossing

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the deposition or depositions of witnesses to be examined by virtue of these presents, shall before he or they be permitted to act as clerk or clerks, as aforesaid, or be present at such examination, severally take the oath last specified in the said schedule annexed: And we also give you, or any one of you, full power and authority, jointly and separately to administer such oath to such clerk or clerks upon the Holy Evangelists. Witness ourself at Westminfter, the — day of — in the — year of our reign.

Here put the surnames of the Master of the Rolls, and the Six clerk. Indorse on the back of the writ towards the top, By order of court.

The oaths annexed to the faid commission are on unstamp'd parchment; but the commission has a treble fix penny stamp.

The commissioner's oath.

OU shall, according to the best of your I skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now produced, and left with you. And you shall not publish, disclose or make known, to any person or persons whatfoever, except to the clerk or clerks by you employed and fworn to fecrecy in the execution of this commission, the contents of all or any of the depolitions of the witnesses, or any of them, to be taken by you and the other commissioners in the faid commission named, or any of them, by virtue of the faid commission, until publication shall pass by rule or order of the high court of Chancery. -So belp you God. The The clerk's oath.

TOU shall truly, faithfully, and without partiality to any or either of the parties in this cause, take and write down, transcribe and ingross the depositions of all and every witness and witnesses produced before and examined by the commissioners, or any of them named in the commission hereunto annexed, as far forth as you are directed and employed by the faid commissioners, or any of them, to take, write down or ingrofs the faid depositions, or any of them. And you shall not publish, difclose or make known, to any person or persons whatfoever, the contents of all or any of the depofitions of the witnesses, or any of them, to be taken, wrote down, transcribed or ingrossed by you, or whereto you shall have recourse, or be any ways privy, until publication shall pass by rule or order of the high court of Chancery. - So help you God.

A commission to examine a defendant touching a contempt.

CEORGE the third, &c. To A. B. C. D. E. F. greeting: Know ye that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give unto you, any three or two of you, full power and authority, in pursuance of an order of our court of Chancery, bearing date the — day of — last past, made in a certain cause there depending, wherein A. B. is complainant, and C. D. defendant, diligently to examine the faid defendant upon interrogatories inclosed in these presents touching a contempt supposed to be by him committed: And therefore we do command you, any three or two of you, that at a certain day and place to be appointed by you for that purpose, you do cause the said defendant to come before you, and then and there examine him upon the faid interrogatories

rogatories on his corporal oath first taken before you, any three or two of you, upon the Holy Evangelists, and that you do take such examination, and reduce it into writing on parchment: And when you shall have so done, you are to send the same to us in our Chancery—wheresoever it shall then be, closed up and under your seals, or the seals of two or three of you, distinctly and plainly set, together with the said interrogatories, and this writ. Witness ourself at Westminster, the —— day of —— in the —— year of our reign.

Commission to take a defendant's examination on interrogatories.

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GEORGE the third, &c. To ____ greeting: Know ye, that we have given unto you, any three or two of you, full power and authority. in pursuance of an order of our court of Chancery, bearing date the —— day of —— made in a certain cause there depending, wherein A. B. is complainant, and C. D. defendant, to take the examination of the faid C. D. defendant, upon interrogatories inclosed in these presents: And therefore we command you, any three or two of you, that at fuch certain day and place, as you shall think fit, you go to the faid defendant, if he cannot conveniently come to you, and take his examination to the faid interrogatories, on his corporal oath upon the Holy Evangelists, to be first administred by you, any three or two of you; the faid examination being diffinctly and plainly wrote upon parchment; and when you shall have so taken the faid examination, you are to fend the same closed up, under the seals of you, any three or two of you, together with the faid interrogatories, and this writ, unto us in our faid court of Chancerywherefoever it shall then be. Witness ourself at Westminster, the —— day of —— in the —— year of our reign.

A commission to examine witnesses and divide

CEORGE the third, &c. To - greeting: Know ye, that we have, pursuant to an order of our court of Chancery, bearing date the - day of - last past, made on the hearing of a certain cause, wherein S. H. widow, and M. H. are plaintiffs, and Sir W. H. Bart. and W. W. Efg; are defendants, fully authorized and impowered you, or any two or more of you, to go to, enter upon, walk over, and furvey the manors of T—— U——, and E—— H. R— in the complainant's bill of complaint particularly mentioned, and the fame to separate, set apart, and divide into three equal parts; and to allot and appoint two third parts of the faid T-, and R——effaces to the plaintiff S. H. and the other third part thereof to the defendant W. W. and to allot and appoint one third part of the faid H. estate to the plaintiff S. H. another third part thereof to the plaintiff M. H. and the remaining third thereof to the defendant W. And for the better making fuch divisions, to examine witnesses touching the values of the faid feveral estates, upon such interrogatories to be exhibited to you, as you, any two or more of you shall think proper, to discover and make out the truth of the premisses. Therefore we command you, any two or more of you, that you meet together at certain days and places by you for this purpose appointed, and from thence go to, enter upon, and walk over, and furvey the faid manors, lands and premiffes; and that you do also cause the said witnesses to come before you, and then and there examine each of them apart, upon fuch interrogatories, upon their respective corporal oaths first taken before you, any two or more of you, upon the Holy Evangelists; and that you do take such their examinations

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nations and reduce them into writing on parchment: And that you, any two or more of you, do separate, fet apart, and divide the faid premisses into three equal parts, and do allot and appoint two third parts of the faid T—and R—eflates to the plaintiff S. H. and the other third part thereof to the defendant W. W. and to allot and appoint one third part of the faid H. estate to the plaintiff M. H. and the remaining thereof to the defendant W. And when you shall have so done, you, or any two or more of you, are to certify and return into our faid court of Chancery, without delay, wherefoever our faid court shall then be, your facts and proceedings in the premisses, by your certificate, distinctly and plainly wrote upon parchment, together with the faid examinations and interrogatories, closed up, and under your feals, or the feals of any two or more of you, distinctly and plainly set, together with this writ. Witness ourself at Westminster, &c.

Commission to assign and set out dower.

GEORGE, &cc. To - greeting: Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give unto you, any three or two of you, full power and authority, in pursuance of an order of our court of Chancery, made in a certain cause there depending, wherein A. B. is complainant, and C. D. defendant, bearing date the —— day of — last, to assign and set out dower for the aforesaid complainant, out of all and fingular the lands and tenements, being lately the estate of ——— deceased, in the said order mentioned, called —— And therefore we command you, any three or two of you, that you meet at a certain time and place to be appointed by you for that purpose, in order to come unto, inspect and view the aforesaid estate, lands and premisses, wheresoever they shall be found to be fituate, lying or being; and according to the best of of your skill and judgment, to assign and set out dower for the said complainant, out of the aforesaid farm, lands and premisses; and doing in all and singular the premisses, according to the true intent and meaning of these presents and the aforesaid order: And when you shall have thus done, that you transmit unto us in our said court of Chancery, wheresoever it shall be, your certificate concerning the said complainant's dower, ingressed on parchment, together with your other proceedings in the premisses, as is usual, with this writ. Witness, &c.

Of commissions to examine witnesses.

OTICE of executing a commission is sometimes served on the clerk in court, if signed by the clerk in court; or may be served upon the solicitor in town or country, as the parties can agree. If the parties are willing, short notice may be given.

Peers of the realm, as well as others, are to give

their testimony upon oath.

A witness was examined upon a commission, swears reflecting words, yet he ought not to pay any charges, it being none of his fault, but the commissioners and their clerks fault to take down that part of the deposition. 2 Will. Rep. 406.

A commission returnable without delay must be executed, if within the kingdom, by the second return of the next Term, else void, and the deposi-

tions to be suppressed. 2. Vern. 197.

There must be a label to all commissions to this effect:

To (naming the commissioners) A commission impowering you to examine witnesses, as well on the part of A. B. complainant, as on the part of C. D. defendant, or either of them, returnable without delay, on fourteen days notice to the defendants.

Fortescue. Collins.

When

When the commission is obtained on the part of the defendant, and the plaintiff joins therein, the words of the commission and label are—As well on the part of C. D. defendant, as on the part of A. B. plaintiff, or either of them.

If it be an ex parte commission, then, if obtained by the plaintiss, the words are — On the part of A. B. complainant, against C. D. defendant, &c.

The plaintiff, two days before the execution of a commission to examine, was arrested by the defendant, and was in execution, but was ordered to be discharged, and the defendant ordered to pay costs, and be at the charge of a new commission.

2

Proceedings upon the execution of a commission to examine witnesses in perpetuam rei memeriam, are the very same as upon a general commission.

The form of a notice of executing a commission given by a clerk in court.

Py virtue of a commission issued out of his Majesty's high court of Chancery, directed to certain commissioners therein named, for the examination of witnesses in a certain cause depending in the said court, between, &c. This is to give you notice, that the said commissioners intend to execute the said commission on Monday the day of next at of the clock of the same day, at the house of, &c. where the commissioners may be present, if they please. Dated, &c.

A. B.

To D. C. (to whom notice is agreed to be given,)

CHAP. II.

Of examination of witnesses, evidence, witnesses, and proofs.

HEN the commissioners have received the commission, they must give notice in writing, to the other side, of the time and place of executing it, in the following form, viz.

Notice of executing a commission.

HEREAS we have received a commission issuing out of his Majesty's high court of Chancery, to us, and, &c. directed for the examination of witnesses in a cause there depending, between A. B. plaintist, and C. D. desendant: These are to give you notice, that we will execute the said commission on the behalf of the plaintist, at the house of, &c. known by the sign of, &c. situate in, &c. in the county of — on — being the — day of — next ensuing, at the hour of — o'clock in the forenoon of the same day, when and where you, and your commissioners and witnesses concerned may be present, if you please. Given under our hands, this —— day of, &c.

To Mr. C. D.

E. F. G. H.

This notice is to be delivered to the party, or But where it is a fhort Vacation, teen days before the time of executing the comas between mission, as has been before observed, (except a Trinity Incomplete time be appointed by order of court, which Term, ten days, or less, very seldom is done) or the depositions shall be sup-is good no-pressed. And the witnesses are also to be served tice.

with a fummons to appear before the commissioners at the time and place, to depose their knowledge to each interrogatory; which summons is in this form:

A summons for witnesses to appear before the commissioners to be examined.

Between A. B. plaintiff, C. D. defendant.

In Chancery.

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* THEREAS we have received a commission iffuing out of his Majesty's high court of Chancery, &c. (ut supra) And whereas we are informed, That you, whose names are here underwritten, are material witnesses for the plaintiff (or defendant) in this cause: These are therefore, by virtue of the faid commission, to will and require you, and every of you, personally to be and appear before us, or any three or two of the faid commissioners, at the house of, &c. known, &c. in, &c. on the - day of - next, then and there to be examined, and to testify your knowledge for and on behalf of the plaintiff (or defendant); and you are then and there to attend, and not to depart until you have been examined on the part of the faid plaintiff: And herein you are not to fail. Given under our hands, &c.

To N. M. P. R. S. T. E. F. W. E. &c. G. H.

But if a witness be unwilling to come, you must get a subpana ad testissicandum sealed, and serve him therewith, and deliver him one shilling with the subpana, and at the same time the commissioners summons, as before; and if the witness so summoned

and served does not appear, the court will grant an attachment against him, unless he comes up at his own expence to be examined before the examiner; or if he be summoned by the commissioners without a subpana ad testissicandum, and do not appear, the court will order such witness to attend at his own expence, and to be examined; and if he disobey such order, then an attachment shall go against him.

The commissioners and witnesses being met together, at the time and place appointed, according to the notice; the commission (which till that time must remain sealed) may be opened, that the commissioners may see their authority; and then they are to administer the oath to each other, and also the oath to the clerks, annexed to the commission,

as aforefaid.

After the oaths are administered, the commissioners and their clerks begin to execute the commission; and having before them the interrogatories both for the plaintists and defendants, the commissioners prefent must sign their names at the bottom of both the interrogatories; and then one of the commissioners, or clerks, draws up the stile or title of the depositions, preparatory to the examination of the witnesses, in paper, usually thus:

On the behalf of the plaintiff.

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rected, for the examination of witnesses in a cause there depending between A.B. plaintiff, and C. D. desendant, on the part and behalf of the plaintiff: We the said Commissioners, also the respective clerks by us employed for taking and ingrossing the said depositions, baving first taken the oaths annexed to the said commission as thereby required.

Then the commissioners call a witness before them, and cause all persons, but themselves and their clerks, and that witness that is to be examined, to leave the room, and then they administer to the witness his oath.

One of the commissioners taking the interrogatories, and producing them to the witness that is to be examined thereto, administers the oath to such witness, as followeth: The commissioners may read the title of the interrogatories to such witness, and then say, You are true answer to make to all such questions as shall be asked you upon these interrogatories, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth.

So belp you God.

The oath being administered, the witness's name and place of abode, addition and age, are to be writ in the same paper, under the title Of the depositions, &c. And the commissioners must themselves examine the witnesses on the interrogatories, and not leave it to their clerks; wherein they are to examine but to one interrogatory at a time, and shall not read to the witnesses another interrogatory till they have gone through and answered the former: And the commissioners shall likewise take down what comes from the witnesses on their examination, and not permit them on their own reading of the interrogatories

interrogatories to set it down themselves; but the depositions must be carefully read over to such witness, and if upon such reading any thing is mistaken that the witness cannot swear to, after he has been examined, the depositions must be rectified; which done, the witness must sign his name or mark to such depositions as he is examined to. A witness may be allowed to use short notes which he brings with him to help his memory; though not the substance of the depositions, nor may he transcribe verbatim such notes. And the commissioners ought not to ask any idle questions, or such as are foreign to the interrogatories, nor set down impertinent answers, but only what are material on the points interrogated.

If any practifer, or other person, goes about to tamper with, or suborn any witness, upon complaint made thereof, and upon examination of the matter

upon oath, he must stand committed.

The names and additions of the witnesses, \mathcal{E}_c , and their depositions or answers, are thus put down:

A. B. of —— in the county of —— gent. aged —— years and upwards, being produced, sworn and examined on the behalf of the plaintiff (or defendant) deposeth as followeth:

Imprimis, To the first interrogatory this deponent saith, That, &c.

Item, To the second interrogatory this deponent saith, &c.

And so proceed through the rest of the interrogaories.

If a commission be adjourned to another day and place, and witnesses are examined, the time and place where such examinations were taken, ought to be mentioned and set down in the title of the respective depositions.

If

If there be any writings directed by the commission to be proved, the commissioners are to give directions to bring them in for that purpose; and after they are proved, exhibits may be made of them.

And the exhibits must be indorsed after the fol-

lowing manner:

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Between A. B. plaintiff, and C. D. defendant, Dec. 1767. At the execution of a commission for examination of witnesses in this cause, this deed or parchment, or paper writing was produced and shewn to E. F. and by him deposed unto at the time of his examination to the third interrogatory on the plaintiff's part, and was also produced and sheron unto, &c. and by him deposed, &c. before us,

> E. F. G. H.

When the witnesses are examined, the depositions are to be ingroffed on parchment, in like manner as the interrogatories, and examined carefully with the paper draughts; after which the commissioners sign fuch schedule or skin of parchment of the examinations, and also the interrogatories, and then bind them up together with the commission, usually (called making up the commission) with some red tape or other string, setting all their names and seals upon the same; but before the commission is sealed up, they are to indorfe upon the back of the commission towards the middle thereof The execution, to which they likewise subscribe their names, as followeth;

> The execution of this commission appears in a certain schedule (or schedules) to this commission annexed, E. F. G. H.

When the commission is executed and made up; the paper draught is to be also sealed up as above, and delivered to one of the commissioners to keep; and sometimes it is cut in two in the middle, and one part thereof is delivered to one of the plaintist's commissioners to keep, and the other part is delivered to one of the defendant's commissioners to keep; and the commissioners must deliver the commission, the label thereof hanging out at the end, personally to the person that brings it to town, who is to deliver it to a Master in *Chancery*, or more usually to the clerk in court who had the carriage of the commission, who indorses the same thus:

of L. M. Before ——

When a person swears it, he goes before a Mafler, commonly at the publick office, where he makes oath, That he received the commission from the hands of two or more of the commissioners therein named, and that it has not been opened nor altered since he so received it.

But if the commission is carried by one of the commissioners, no oath is required; and you need only indorse,

23d July 1767. Received by the hands of E. F. one of the commissioners.

The commissioners have as fees usually a guinea a day each, and their clerks for ingrossing, &c. such fees as the commissioners commonly settle among themselves, and all charges of eating, drinking and entertainment borne; and the person that carries the commission is usually allowed sive shillings for his trouble.

N. B. On delivery of the commission, the examinations or depositions are not to be opened or copied, until publication is actually passed.

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Thus much with respect to the examinations of witnesses by commissioners in the country; let us consider in the next place of examining witnesses by examiners in court.

After replication either fide, till publication is past, may examine what witnesses they please in court before one of the examiners.

If a party examines some witnesses in town, and others by commission, he is not obliged to file his whole set of interrogatories in the examiner's office, but such alone as he has occasion for in town; but they must be the same as were exhibited at the commission, or else it would be paying for copies of whole interrogatories twice over.

The examiners office is to examine on oath the witnesses on both sides, that are brought before them, in any cause, and they have a right to examine all witnesses within ten miles of London: And if any commission is made out, or witness examined in that district, such depositions will be suppressed on complaint, and the clerk who made out the commission will stand committed for a misse-haviour and breach of the known duty of his office, as happened in Mr. Snow's case to one of the clerks, where the commission was executed at a tavern in Chancery Lane.

Where an examiner was committed and discharged from his office for suffering the plaintiff to come up into the room, and answer the person's questions who was examined. Hoster and Hart, Mosely 321.

If the witnesses live in town, and you have no occasion to go to commission in the country (or after you have examined some witnesses in the country, and have others to examine in town) then exhibit the interrogatories in the examiner's office, and get a rule entered to produce witnesses; and after they are examined, a rule to pass publication.

If a witness is willing to be examined, and will attend without a subtana served on him, you need only

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The commissioners have as fees usually a guinea a day each, and their clerks for ingrossing, &c. such fees as the commissioners commonly settle among themselves, and all charges of eating, drinking and entertainment borne; and the person that carries the commission is usually allowed five shillings for his trouble.

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If a witness is willing to be examined, and will attend without a *subjana* ferved on him, you need

only to appoint a time with the examiner, who is to examine him; and then give the witness notice; or attend with the witness upon the examiner, at the time appointed, who will then examine him, after he has been sworn to the interrogatories before a Master, and produced and shewn to the adverse

clerk in court, as hereafter.

But if a witness refuses to be sworn willingly upon interrogatories, you must serve him with a subpana, and at the same time deliver him one shilling, and if he refuses to come and be sworn upon such service, you are to make an affidavit of such service of the subpana; which being filed, you then apply to your examiner for a certificate that such witness is not fworn to the faid interrogatories: And upon that affidavit and certificate your counsel moves the court, of course, for an order that such witness do in four days after personal service attend, and be fworn and examined to the faid interrogatories, or in default thereof he is to stand committed to the Fleet prison. And fuch witness being personally ferved with fuch order, and ftill refufing to be fworn and examined to the interrogatories, upon affidavit being made and filed of the personal service of the faid order, and the examiner's certificate of his not being examined, your counsel moves again, of course, and obtains another order that such witness do fland committed to the prison of the Fleet; which order you deliver to one of the tipstaffs belonging to the court of Chancery, and he gets a warrant thereon figned by the Lord Chancellor, and by virtue thereof apprehends fuch witness, and then carries and delivers him to the Warden of the Fleet, and he is to remain in custody not only till he has been examined upon fuch interrogatories, but also paid the plaintiff his costs he has been put to about him, to be taxed by the Master, besides the Tipflaff's and Warden's fees for taking and detaining him.

The like method is to be taken against a witness who is sworn to the interrogatories, and refuses after-

wards to be examined thereupon.

The witnesses or parties to be examined, must be first sworn before a Master in Chancery, to answer truly to the interrogatories; and their names who are sworn must be inserted by the examiner, or his clerk, upon the interrogatories, and then before they are to be examined, they are introduced into the Six clerks office, by the examiner's clerk, and produced at the seat of the adverse clerk in court, where the examiner's clerk is to leave a notice in writing of the name and place of residence of every such witness. Vide Ord. Chan. 126. In order to prevent witnesses from being personated, and to give an opportunity for cross examination.

If interrogatories are filed for a witness's examination, the party who produces him is obliged to procure him to stay or return, and attend to be examined thereon; but if no such interrogatories are filed, and he is not demanded to be cross examined at the same time, when he is under examination, if he once goes about his business, the party who intends to cross examine must get him examined as he can; for the adverse party is not in this case bound to produce him over again to attend to be cross examined; since it was the party's fault he had not the interrogatories ready to have cross examined him, whilst he was under his former examination.

If a witness be examined by commissioners in the country, he shall not be examined again in court

without a special order for that purpose.

Of examining witnesses de bene esse, (a) and esta- (a) Altho' it is an orblishing their testimony in perpetuam rei memoriam. der of course to examine a

defendant de bene esse, saving just exceptions; yet when the cause is heard, and it appears that such desendant is a party interested, it is proper to show cause against such an order before he is examined. I Vern. 452.

Vol. II.

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The plaintiff may examine a person de bene esse, though neither old, or infirm, or going abroad, upon affidavit of his being the only person who has any knowledge of the forgery of a deed, or other material fact; for otherwise if he dies before he is examined in chief, the proof of the fact is gone. Mosely, 390. in Marg.

Witnesses are sometimes examined in perpe'uam rei memoriam to preserve their testimony in case of death, &c. and their examinations may be taken either in court, or by commission; and the method of obtaining such a commission, is by filing a proper bill

for that purpose. Vide ante.

And after the bill is filed, the court, on affidavit made that the faid with fles are old, infirm, going beyond sea, &c. so that the party is in danger of losing their testimony, if they live in the country, will grant a commission; or if they are within ten miles of London, will order them to be examined in court de bene esse, which will make their depositions valid in that cause only, and against those who are parties to it; but if it appear, that they might afterwards have been examined in chief, regularly, such depositions shall not be made use of: But if the witnesses live till they can be examined in chief, they must be examined over again as other witnesses in chief are; but if they die in the mean time, or are not returned from beyond fea, then their depositions are to be published in such manner as is shewn hereafter. And the depositions taken in such cases, will not only bind the parties in that and all other fuits, but likewise all those claiming by or from them.

Depositions to be taken de bene esse shall not be published without assidavit of the death of the witness, or that he could not be examined in chief.

Sel. Ca. in Chan. 11.

Examination de bene esse is used in many other bills than barely to perpetuate testimony: As where

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most material witness to examine, upon assidavit that this witness is in a languishing condition, or in danger of dying, before he can be examined in chief, or where he is going a long voyage, from whence he cannot return by the time he is to be examined in chief, and to which place he is bound, and cannot possibly stay; in either of these cases, upon motion or petition, and making an affidavit of such witness's being very old, or sick and infirm, or going speedily beyond sea, and is a very material witness for the plaintiss, the court never denies to make an order to examine such a witness de bene esse, saving just exceptions to the other side.

The court cannot make an order to examine a plaintiff de bene esse, saving just exceptions, tho' they will make such order to examine a defendant; for the defendant should have demurred to such an immaterial plaintiff.—If a corporation would make one of their own Members a witness, they must disfranchise him. 1 Will. 595. But no plaintiff ought to be a witness for another, as being liable to costs.

Ibid. 596.

A witness was ordered to be examined de bene esse, on affidavit that the thing examined into lay only in the knowledge of the witness, and was a matter of great importance, though no affidavit of the witness's being old or infirm. 3 Will. Rep. 77. Shirley, &cc. v. Earl of Ferrers. Mosely, 388. pl. 199.

But if the party interested shew cause to the contrary allowed by the court, then the plaintiff is to de-

fift from examining fuch witness.

If by commission, he may examine ex parte, or the defendant may come in by appearance and join in commission, if he pleases, and then fourteen days notice is to be given of executing the commission: And the defendant may by interrogatories cros examine such witness, if he thinks sit.

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Though the depositions are not ordinarily to be published while the witnesses live, yet in some cases, as by consent of parties, or upon oath, that the plaintiff has some trial at law wherein he shall need them, and that the witnesses are not able to travel; or for other good reasons, the court will sometimes (though very rarely) order publication in the lifetime of the witnesses; and then the party may exemplify the depositions, and they may be given in evidence in any other court, by order of this court.

If a matter is properly triable at law, as a title, and the plaintiff can have an opportunity to try it there; this kind of bill is not to be brought here till the party hath affirmed his title at law; if he

should, it will be dismissed upon a demurrer.

These depositions are not to be given in evidence, or made use of against any others but the defendants who were subpœna'd to defend the matter, or some claiming under them, whose interest accrued since

the bill preferred.

When lands are devised by will from the heir at law, and there is no occasion or opportunity to prove or establish it at law, it is often necessary to prove fuch will in Chancery, to perpetuate the testimony thereof; the way to do which is to exhibit the bill against the heir at law, and set forth the will in bæc verba. And the defendant having answered, they proceed to iffue as in other cases; and then examine the witnesses to the will, or prove their hands, if they are dead. The will (if witnesses are examined in town) must be left in the examiner's office to be examined to; which done, and publication paffed, the cause is at an end, an order, or rules, being first obtained for publication: And the defendant, who is the heir at law, and examines no witnesses touching the validity of the will, may give notice of motion for the plaintiff to pay him his costs to be taxed by a Master, which the court usually orders. Commonly

Commonly where an estate is considerable, the plaintiff is at the charge of an exemplification of the

proceedings of that cause.

But though this court suffers examinations to perpetuate the testimony of a will, yet it will not barely try the validity of a will; but if the same come collaterally in question upon a bill for the performance of a trust, or touching a devise out of lands, &c. the court generally directs an issue at law to try the

validity thereof.

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Though there be goods and chattels devised by the same will, whereby lands are devised; yet the proving thereof in the spiritual court, is of no avail in respect of the lands; and this court may prohibit the spiritual court to meddle in the proof any farther than concerns the goods or personal estate, &c. Where there is no occasion or opportunity to prove and establish it at law, it is the best and safest way to prove it in this court.

The proceedings on a bill to perpetuate the testimony of witnesses are mostly the same as others. See more on this head, I Vern. 452. I Vern. 331. Vide I Salk. Cro. Eliz. 352. Hard. 332. Raym. 335. Hob. 112. Godb. 336. I Vern. 105. 2 Vern. 159. I Vern. 185, 308, 441. I Vern. 354.

Maxims of Equity 33.

If the plaintiff, to perpetuate testimony to a will concerning lands, exhibit a bill against the heir at law, setting forth the will, and the desendant answers, the plaintiff has then only to proceed to issue, and examine witnesses to the will to perpetuate their testimony, and then the will being brought to the examiner's office (if in town) and publication passed, the cause is at an end. An order must be first obtained for publication.

This fort of bill ought not to be brought for such trivial matters as common, ways, watercourses, &c. till after a recovery at law. Vern. 308 & 312.

A bill to examine in perpet, &c. by a deville against a purchaser without notice, shall not be allowed, till a will is established by verdict at law, Vern. 354.

Neither can fuch a bill be brought to establish one's title, until made good by verdict at law, if he is under no impediment of trying his title at

law. Vern. 441.

A defendant demurred to a bill to perpetuate, &c. whereas he should not have demurred; but either assented by his answer to examine, or shew sufficient cause why witnesses should not be examined, and left it to the consideration of the court, whether the cause be sufficient or no; and the defendant was accordingly ordered to withdraw his demurrer, and put in an answer; and thereby either consent to such examination, or shew cause to the contrary. Southall v. Peryn, 26 Eliz.

The depositions of a witness who was examined in perpetuam rei memoriam, were suppressed on petition, after his death, and the examiner discharged, and committed for four practice and irregularity in taking them, the plaintist being suffered by the examiner to instruct him, and the witness being proved corrupted, and as he had been examined on a trial to same points, plaintist might give evidence of

what he fwore. Mosely, 327.

With regard to examining witnesses viva voce, it is incumbent on the party who wants to examine to produce his witnesses in court, at the hearing, having first obtained an order for that purpose, and also the exhibits, which are delivered together with the order to the Register in court, and the court examines the witnesses accordingly.

but not permitted to prove witnesses hands who were dead, but leave given (by putting off the cause) to go to the examiner. Pr. Cb. 64. pl. 59.

You may prove an exhibit viva voce at the hearing, but you can examine the witnesses only to the

execution. Mosely, 381.

The court will not grant an order to prove an exhibit viva voce on the hearing exceptions to the Master's report, because on arguing them you can offer nothing that was not before the Master. Mosely, 190. pl. 103

For more concerning of examining witnesses de bene effe, and establishing their testimony in perpetuam rei memoriam, vide 2 Vol. Abr. Eq. (D)

A party interested, by releasing his right, may of the fuf. be a witness. 2 Vern. 375. Culpeper and Fairfax, ficiency and difability of S. P. 2 Vern. 472. Callow and Minure.

Where there is a dispute touching money given for the benefit of parishioners, none of the inhabitants ought to be admitted as a witness. 2 Vern.

A bankrupt (a) by releasing to the assignees, may. (a) The 2 Vern. 637. But whilft he continues interested, he a bankrupt can by no means be a witness. 2 Vern. 463, 464. sworn before traordinary in Cork, was allowed to be read. Mof. 78. pl. 50.

A legatee (b) of a small legacy, as five shil- (b) The lings to a private person, or five pounds to a of a legatee nobleman, may be a witness for the will. 1 Vern. who had given a re-254. A person disinterested when examined, be-ceipt under coming interested afterwards, yet his examination hand and feal for the may be made use of, Trin. 1702. Holcroft whole legaand Smith, but cannot be made use of at law. cy, was not allowed to 2 Vern. 699. A witness appearing to be interested, be read as though he swears he hath received satisfaction, yet evidence that she had is not a competent witness, for the law will not only receivfuffer him to swear this, but the release or other act ed part. Mosely, 40. destroying his interest must be proved. MSS. Anon. Mich. 11 Geo. 2. Plaintiffs cannot be examined

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(c) Ade- for each other, but defendants (c) may. 1 Vern. fendantexamined for 230. 2 Chan. Ca. 214. Mich. 1715. Casey and the plaintiff, Beachfield. Gilb. 98. Preced. in Chan. 411. A may demur to an inter- commissioner may, but he should be examined belogatory, fore any other witness. 1 Vern. 369. An arbiceause concerned in trator may. 1 Vern. 157, 158. Members of a interest. Corporation cannot. Vide 1 Vern. 254. 2 Vern. Mosely, 195. pl. 107. See 317. A wife cannot against her husband; unless id. 229. and in case of extreme necessity. Vide 2 Chan. Ca. 39. for is wit-

ness to a deed, you must examine to the execution only, for the witness may demur to

any other questions. Mosely, 196.

A bankrupt's wife cannot be examined against her husband to prove his bankruptcy; but may touching discovery of his effects. 1 Will. 611.

Nor can the bankrupt himself be examined touching his own bankruptcy, by Stat. 5 Geo. Ibid.

If an executor in trust renounces the executor's part, and lets another take out administration with the will annexed, he may be a witness. 3 Will. 182.

A defendant by order may examine the prochain amy, but not one of the plaintiffs. Mosely, 312.

[For more of the fufficiency and disability of a

witness, vide 2 Vol. Abr. Eq. (A) p. 395.]

Note, That if a plaintiff wants to examine a defendant as a witness, he must obtain an order by motion or petition for that purpose, which order is of course, and must be served on the adverse clerk in court; also the defendant may obtain the like order to examine a co-defendant as a witness for him; but all these orders are upon suggestion, that the defendant is not concerned in point of interest in the matters in question, and they are never granted but with a clause of (saving just exceptions to the other side); and this must be made at the hearing

hearing of the cause; and this order for examining a defendant must be produced at the commission office, or in the examiner's, when the defendant attends to be examined, without which he cannot be examined; for it is by virtue of that order they are impowered to examine him, and they cannot do it otherwise. For a petition to examine a defendant, vide Petitions.

What shall be admitted as evidence, and will

amount to sufficient proof.

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A bill in another cause is not to be read as evidence against the person named plaintiff in it, unless it be proved, that it was exhibited with privity. Wollet and Roberts, 1 Chan. Ca. 64.

By the constant practice of the court, acts of the court, as a decree, or order, in another cause between the same parties, may be read without an or-

der. Mosely, 188.

Depositions cannot be given in evidence against any person who was not party to the suit; and the reason is, because he had not liberty to cross examine the witnesses; and it is against natural justice, that a man should be concluded in a cause to which he never was a party. Hardr. 22. 472. Bunb. 50. pl. 84. 91. pl. 148. 321. pl. 403. 9 Mod. 229. Carth. 181. Gilb. Evid. 62. Cb. Pr. 212. Theo. Evid. 30. 12 Vin. Abr. 113. pl. 45. 47. Vern. 413. pl. 390. Eq. Cas. abr. 227. pl. 3. Atk. Rep. 204.

When the depositions taken in a former cause shall be made use of, it must be done by petition to the Master of the Rolls, or motion to the

court.

That a man's answer in the spiritual court, or voluntary oath before a justice of the peace, may be read against him in Chancery, by order, vide Vern. 73.

If a man unnecessarily makes any one a defendant, he thereby cuts himself off from the benefit of his evidence, for it is his own fault.

But where feveral are made defendants, it will not hinder any one of the defendants from the benefit of the evidence of any others that are made so.

Indeed in case of trustees, it is necessary that they be made defendants, and therefore there the plaintiff may have the benefit of the evidence. Gibson

and Albert, Lucas's Rep. 19, 20.

But it is the fettled practice, that one defendant's answer cannot be read as evidence against another defendant; and therefore if you want his evidence, you must apply by petition or motion, as before observed.

When copies of notices admitted as evidence,

vide Winne and Loyd, 2 Vern. 603.

The copy of a deed inrolled for fafe custody, admitted as evidence. Combes and Spencer, 2 Vern. 471. 2 Vern. 591. S. C.

Confessing a matter by answer, sufficient evidence,

2 Vern. 380. Vide I Vern. 452. S. P.

A settlement made pursuant to marriage-articles, evidence that all treaties were resolved into that.

I Vern. 369.

A purchaser who buys in a precedent incumbrance, not obliged to prove the actual payment of the money. 2 Vern. 279. and vide 1 Vern.

An injured party's oath good in odium spoliatoris.

1 Vern. 207, 308. S. C. cited.

One witness against a defendant's answer not sufficient. Alam and Jourdon, 1 Vern. 161. 3 Cha. Ca. 123. S. P. Vide 2 Vern. 554.

The oath of the party is ever looked upon in equity to be as good as the oath of a fingle person.

Where the whole proof of any matter arises from the defendant's answer, the answer must be taken intire. intire, and no part of it impeached by any other

evidence. Lucas's Rep. 405.

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Yet observe that cases may, and do often happen, where the court may ground a decree upon the oath of a single witness, attended with other circumstances to corroborate it; as where the answer of the party appears to be notoriously falsissed, by which means it comes to lose that credit which otherwise it would and ought justly to have.

Where parol or collateral evidence will be admitted to explain, confirm, or contradict what ap-

pears on the face of a deed or will.

To shew that the testator intended his wife and executrix should have the personal estate exempt from debts and legacies. 2 Vern. 252. and vide 1 Chan. Ca. 196. 2 Vern. 99. 5 Co. 67. 2 Vern.

98, 337, 625. Treatise of Eq. 126.

A. devised particular lands to his executors to be fold for payment of all his proper debts, and gave directions to the person who drew the will, to give all his personal estate to his executors; but by mistake that was omitted, the proved by the person who drew the will. Harcourt C. decreed the executors to account for the personal estate, saying, be must construe the intent of the testator out of the words of the will, and not upon parol evidence. 2 Vol. Abr. Eq. 415. C. 5.

Where parol evidence touching the testator's intention is not to be admitted, and why. Vide 3

Will. 353.

Parol evidence of the person who drew the will, admitted to shew what the testator intended to pass by a devise of his houshold goods. Vide 2 Vern. 517. Admitted to shew, that grandchildren born after the will, should take. 2 Vern. 378.

Parol proof allowed of a man's intention in a will, where the question was, if a legacy should be a fatisfac-

tisfaction of a debt due from testator to the legatee.

2 Vern. 593.

Parol evidence where to explain an implication in a will or deed, or upon a declaration and promife, have been allowed in this court. MSS. Ca. in Chan. 8 Vin. Abr. 195. pl. 24. 11 Vin. Abr. 153. pl. 71. Docksey against Docksey, Hill. 6 Ann. Ibid. Will. Rep. 111. Lamplugh against Lamplugh, Mich. 8 Ann. Ibid. Harris against Horwell, Mich. 7 Ann. Gilb. Eq. Rep. 11.

When a paper is produced by one party as a charge, the other may read any thing contained in it

as a discharge. Barnard. Rep. in Chan. 128.

Where a testator has given instructions for his will, and before it could be executed, died; the instructions, and not the draught according to the instructions, ought to be proved, for they are the will, and not the draught. MSS. Ca. in Chan. Shess against Pelbam, Mich. 8 Ann. 2 Vern. 647. pl. 577.

Parol evidence admitted, to shew that the devisee promised the testator to pay an annuity. Oldbam

and Litchford, 2 Vern. 506.

Always admitted to ascertain the person, or the thing described. Hodgson and Hodgson, 2 Vern. 593.—To out an implication. 2 Vern. 648, 736. S. P. Parol proof admitted, to shew that a legacy greater than a debt due to the legatee, was not in satisfaction of the debt. 2 Vern. 593, 594.

[For more concerning parol evidence, &c. vide

2 Vol. Air. Eq. (C) p. 415.]

If A. purchases in the name B., A. may be admitted to prove that he paid the purchase money, and so make it a resulting trust, or trust by implication of law for himself. 1 Vern. 366.

An entry in the book of a fleward of a manor, and parol proof by the foreman of the jury, was admitted as good evidence, that a feme covert furren-

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dered her whole estate, although the surrender upon the roll, and the admission thereon, was but of a moiety. 2 Vern. 547.

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Of examining witnesses, exhibiting interrogatories, publishing and suppressing their depositions.

(a) A Master examined a witness thrice to a mar- (a) If on ter of account, and the depositions were suppressed. ties after 2 Chan. Ca. 79.

publication paffed, has

an order to examine on the usual affidavit, the other party may not only cross examine, but also examine at large. 1 Vern. 253.

One defendant cannot move to strike another defendant out of the bill who hath never been ferved with process in order to make him a witness, but plaintiff may; and a defendant may have an order to examine fuch defendant, faving just exceptions. Gilb. Rep. in Eq. 183.

A co-plaintiff, tho' but a trustee, cannot be examined as a witness for another plaintiff; but if he had been made a defendant (then the trust bad been upon oath) he might upon disclaiming all interest be a good witness. 1 Vern. 230.

If an interrogatory be leading, (b) that is fuffi- (3) Incient to suppress the deposition. 2 Vern. 472. Yet terrogatories and deposiafter interrogatories, and the depolitions of a witness tions supthereon, had been suppressed, because the interro-having been gatories were leading, and then publication passed; leading, but and the court being moved, that new interrogatories countrances might be drawn and fettled by the Master, for the of the case, examination of this witness, whose evidence was quence of very material, though the practice was admitted to the witnefbe always against it, and it was urged to be of dan-leave was gerous consequence; yet one precedent being pro-giren to file duced to this purpose, and the interrogatories which Gib. Eq. had been suppressed being such as might be drawn Rep. 150.

by Chan 493. As to the difference

of examining in the office, and before commissioners, with regard to exhibiting a new fet of interrogatories, or further examination of the fame, or other witnesses, vide ibid. 42.

by many other counsel, without any apprehension of their being leading; the court, to permit the party to have the benefit of his witness's testimony, ordered new interrogatories to be put in and settled by a Master, for his re-examination. Trin. 1718. Spencer and Allen. Eq. Cas. abr. 232. pl. 3. Gilb. Eq. Rep. 150. Pr. Cb. 493.

Though the general rule be, that after publication, no new witness can be examined, nor a witness before examined re-examined; yet upon special circumstances set forth by motion and affidavit, the rule may be dispensed with. 1 Chan. Ca. 228.

2 Chan. Ca. 75. 1 Chan. Ca. 25.

Upon motion for leave to examine after publication, upon making the usual affidavit of not having seen the depositions, &c. Lord Keeper declared, that in such a case, the other side should be at liberty to examine at large, as well as cross examine the witnesses, produced by the party who

made the motion. I Vern. 253.

If interrogatories are exhibited in the examiners office, and witnesses examined thereon, either party may, without any order for that purpose, exhibit new interrogatories for further examination of the same or other witnesses: But when a commission is issued, no new interrogatories can be exhibited before the commissioners, without motion and leave of the court. Pasch. 1714. Pre. Ch. 386. Eq. Cas. abr. 233. Andrews and Brown.

In the qualification of witnesses, equity follows the law: And if a man be rendered infamous in law; as by an infamous judgment, or wants discretion and understanding, his testimony is to be rejected. And the cases where the party is concerned in interest, though never so small, have usually prevailed, unless in special instances: And herein it must be considered whether their interest is so

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great as it may be prefumed to make them partial, or not.

As to evidence, the usual course in this court is by depositions, for no witnesses viva voce are allowed at the hearing, except by special order. there being the fame question in both causes, and the defendant's defence being the same, the depositions in a former cause by order of court shall be read against him. But depositions in another cause, in which the matters in question were not in iffue, shall not be read. So depositions taken in a suit betwixt other persons are not to be given in evidence; for he had no opportunity to cross examine So depositions taken in a cause, where the plaintiff's father was a party to the fuit, being in all matters the same, his father being only tenant for life, those depositions could not be read against him; for the advantage ought in all cases to be reciprocal. And where a cause is dismissed, the matter of it not being proper for equity to decree, yet the fact in this cause proved, may be used as evidence between the fame parties, whenever it shall come in question again. But when a cause is dismissed, not upon this ground, but for irregularity, fo that in truth there was never regularly any fuch cause in court, and consequently no proofs, those proofs cannot be used: For proofs cannot be exemplified without bill and answer, nor can they be read at law, unless the bill upon which they were taken can be read. No depositions ought to be allowed which were not taken in a court of record. And they are like examinations of witnesses. that although the defendant may read what part he will, yet the other fide may read the whole afterwards.

Note; Exhibits proved by depositions must be shewn at the hearing, if the party would have any benefit by them.

Deposi-

Depositions of witnesses taken in Ireland, allowed good evidence in Chancery here. Lord Altham v. The Earl of Anglesea, Gilb. 16, 18.

A witness demurred to an interrogatory as, not

pertinent-but disallowed. 1 Vern. 165.

Of depositions of witnesses, and of proofs admitted in evidence in this court.

Y order, 19 Jan. 1694. no copies of depositions are to be read or made use of in court, or before a Master, but what are taken out of the proper office, and signed for the party, for whom

the fame shall be read.

The examiners, or their deputies, have liberty to attend in court to infrect all copies of depositions, which are read either for the plaintiff, or defendant, and to see whether they be truly signed for the party that produces the same; and in case the examiner shall discover any fraud, or ill practice, the cause will be put off; and the parties offending shall stand committed to the Fleet, till the officer injured be agreed with, and paid his fees; and till five pounds be paid to such person as the Lord Chancellor or Keeper shall appoint, for the use of the poor, and till the client injured by putting off the cause be reimbursed his charges in respect thereof, and till the further order of the court. Ord. Chan. 4.

Depositions taken in a former cause cannot be read in another cause against one who does not claim under the party against whom they were taken (unless by special order).—But if a legatee brings a bill against an executor and proves assets, another legatee, tho' no party, may have the benefit of

those depositions. 1 Vern. 413.

Bill to perpetuate the testimony of witnesses, and to prove a will, is such a suit wherein if the proceedings are rightly carried on will affect one claim-

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ing as a purchaser under one of the parties after filing the bill. Barnard. 453.

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Depositions amended after publication, upon examination of the examiner and witnesses, and the depositions re-sworn. 2 Will. 646.—But the like application was denied. Rep. of Sel. Ca. in Chan. 25.

One examined as a witness when disinterested, he afterwards becomes in itled to the estate in question, his deposition shall be read. 2 Vern. 699. Vide 2 Vern. 472.

After publication you may examine as well to the competency as to the credibility of a witness; and a distinction between them exploded. 2 Vern. 464.

Defendant may read his own answer from the draught; fecus, the answer of another must be from the office-copy. Gilb. 66.

A bond cancelled made an exhibit, and allowed as evidence to prove the execution of articles, the limitation being recited and inserted in the bond. Gilb. 182.

A man's answer in the spiritual court, or any where on oath, may be read against him here. I Vern. 52.

Depositions of a fick person, or one beyond sea,

may be read after an order for that purpose.

Cross examining a witness by one side in any matter, tending to the merits, makes him a good witness to the other side, though otherwise liable to an exception, as a Member of a corporation, &c. Vern. 254.

Depositions taken in a cause where father is tenant for life, cannot be read against the son, tenant of the remainder in tail. *Prec. in Chan.* 212.

If defendant be examined as a witness, plaintiff must stand to his depositions as conclusive; and where a defendant is first examined, you shall not examine witnesses to convict him of perjury.

Vol. II, E A

A witness having finished his examination on an account, now moved to be examined on the other

fide, and allowed. Ayl. 47.

Where a witness's depositions on the one side, contradict his depositions on the other, it is the course to order him to attend the court to explain himself, otherwise his depositions shall be suppressible.

fed. Chan. Ca. 298.

This cause stood in the paper for hearing, and the plaintiff applied to King Chancellor by petition, that a deposition taken in the cause might be amended upon an affidavit of the witness; the examiner had mistaken him in the following manner: "The witness had been examined when he saw such a person;" and it was taken down in the deposition, "about six weeks after the marriage of the man inquired after;" whereas the witness in his affidavit swore that he said, "about six weeks after the fire which happened in Drury Lane about August 1727."

King Chancellor, upon hearing the depolitions and affidavits of the witnesses, ordered the witness who was present in court to be sworn, which was done, and the man examined, and, the examiner attending, his deposition was amended instantly,

and the cause proceeded.

But the like application being made between the feals in a cause between *Traberne* and *Burdus*, he denied it, and said this matter must be stopt in time. 2 Kel. 21. pl. 25. Penderil, v. Penderil.

Depositions in one cause may be used in a cross cause without motion; and where one party obtains an order, the other may use the same without

motion.

No letters or notes not proved fhall be used, but records upon motion may be proved viva voce in court.

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Receipts for money paid cannot be proved viva voce, as that would be establishing a charge which the other side have had no opportunity of examining to and disapproving. MS. Notes. See Atk. Rep. 444. pl. 202.

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Depositions in a former cause between the same parties may be used by special order, and the adverse party may also read them. 1 Chan. Ca. 175.

To ground a motion for longer time to examine, the affidavit must contain the names of the chiefest witnesses, and the points to which they are to be examined. Chan. Ca. 317.

A copy of a deed to lead the uses of a fine inrolled for safe custody only, allowed to be read as evidence on a trial at law, whether such deed of uses was executed. 2 Vern. 471.

Depositions between the same parties in another cause are not to be read without order.—So of interlocutory—because not knowing what may be read, the opportunity of contradicting them is lost; and an interlocutory order may have been destroyed by a subsequent one. Sel. Ca. in Cb. 76.

Defendant not served with process, may on order be examined as a witness, or struck out of the bill (by motion) before answer, or after, on costs. 2 Chan. Ca. 214.

If husband and wife contradict, the depositions ought to be suppressed. Chan. Ca. 302.

Shop-books have fometimes been read at the hearing, and fometimes depositions in the admiralty. Chan. Ca. 206.

A man's book of accounts is evidence against him, not for him.

Parish-books, or church-books, no evidence.

Trustees shall not be examined one against another.

Parties interested shall not be examined to prove a custom.

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Counsel.

Counsel, &c. shall not be examined to what came to their knowledge as counsel for their clients; to other matters they may.

Plaintiff's own proof of defendant's contempt

allowed. 2 Freem. 132.

Witnesses formerly examined in Scaccario, not to be re-examined in Chancery as to the same matter.

If a witness refuse to be cross examined, the court on motion will suppress his ex parte deposition. Chan. Ca. 322.

No exceptions to witnesses after publication.

Chan. Ca. 322.

A witness cannot demur to questions as imper-

tinent to the iffue. Vern. 165.

Where there is only a fingle witness against defendant's oath, this is not sufficient evidence for a decree; nor will the court direct a trial at law, the plaintiff baving bad the benefit of a discovery on defendant's oath. 2 Vern. 283.

None can be a witness where his interest is concerned, be it never so small or minute. 2 Vern.

317.

The plaintiff's christian name being mistaken in the title of the interrogatories, the depositions could not be read, nor would the court suffer the title to be amended, though most of the witnesses since examination were gone beyond sea. 2 Vern. 435.

In some cases, the answer of one defendant may be read against the other. 2 Vol. Abr. Eq. Title

Answers, &c. p. 67. c. 7.

A co-plaintiff, though but a trustee, cannot be examined as a witness for the other plaintiff; but one defendant may be examined as a witness for the other: The reason of which is this, that if the cause miscarries the plaintiffs would be liable to costs, and therefore their swearing might be to exempt themselves; besides, it is their own act and choice that they are plaintiffs; but it is otherwise with defendants,

defendants, for they are forced to be made parties at the will of the plaintiff; and if this act of the plaintiff should intirely take away their testimony, it would be then in the power of any one who had a mind to oppress another, to deprive him of his defence, by making the most material witnesses defendants in the suit. The court has therefore ordered it otherwise, and a defendant that is not materially interested, may be examined either on the part of the plaintiff or defendant, saving all just exceptions. Cases v. Beachfield, Mich. 1715. MS. Rep. Gilb. Eq. Rep. 98. Eq. Cas. Abr. 225. pl. 78.

Depositions read at the hearing of the cause, not

to be read on appeal to the Lords.

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A witness sworn and examined to several of the interrogatories, dies suddenly before he has signed his examination; these depositions cannot be made use of, for they are no evidence. I Will. Rep. 414.

Where depositions of witnesses may be amended

after publication. See 2 Will. Rep. 646.

A parishioner is not a good witness to prove a charity given to the parish, but a lodger who does not pay to the poor is. 1 Will. Rep. 600.

A witness found to swear fallly in part, his testi-

mony utterly rejected. Dalton, p. 271.

In all cases in law and equity, a man and his wife are but as one witness.

A man outlawed is not to be received as a witness; per Lord Chancellor. Cock v. Morgan.

Copies of depositions are not to be recorded or

exemplified. 2 Chan. Rep. 36.

Where the wife shall be allowed as evidence against the husband. See Cases in Equity Abr. 1 Vol.

A deed was executed, and altered by consent of parties, and then re-executed; and per cur. this deed cannot be given in evidence as a new deed, unless it be stamp'd afresh. 2 Vol. Abr. Eq. 414. c. 13.

E 3

A trustee was examined as a witness, and afterwards was thought proper to be made a defendant, his depositions not allowed; the he pay no costs, nor shall gain or lose by the decree, because the decree must be against him, if decreed for the plaintiff, and his depositions are to affirm his own act.

One being ferved with a fubpæna to testify, upon shewing to the court by affidavit that he was solicitor in the cause, was discharged by order from being

examined. Cary Rep. 81.

See in what cases, after publication or death of the deponent, depositions may be explained, but not contradicted by new proof. 1 Chan. Ca. 25. Hard. Rep. 180. Kelw. 96.

The king's certificate allowed as evidence. Hob.

Rep. 213. Godbolt 199.

An inquisition post mortem may be read as evi-

dence, though it is not conclusive evidence.

After defendant hath been examined on interrogatories, and publication passed, the plaintiff ought not to have a commission to examine witnesses in order to falsify defendant's examination, this tending to make causes endless. 3 Will. Rep. 413.

Depositions proving matters not charged in the bill, and put in issue, cannot be read. 1 Vern. 484.

The creditors of Lord Lovelace obtained a decree for payment of their debts, and to fet aside some conveyances gained by fraud; and Sir H. Johnson and the legatees are made defendants: The legatees having brought their bill against Sir H. Johnson, the question was, if the depositions in the former cause, touching the fraud, might be read in this cause. Per cur": The question being the same in both causes, and Sir H. Johnson's defence the same, the depositions ought to be read. 2 Vern. 447.

After bill filed and answer come in, a replication was filed, and several witnesses were examined, and

their

their depositions taken; then the plaintiff moved to withdraw his replication, and took exceptions to the answer, and there was a replication, and other witnesses were examined. On the hearing the first deposition was offered to be read, but rejected and suppressed; they should have examined the witnesses a-new after coming in of the second answer and replication filed, or have moved the court for liberty to use the former depositions at the hearing. Gilb. 42.

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oncerning a modus for small tithes due to the Vicar of Westbam in Essex, a survey taken by commissioners appointed by the Commons tempore usurpationis, of the lands of King Charles the first, his Queen, &c.—(the manor of Westbam being part of the Queen's dowry) was produced in evidence to prove, that tithes were thereout payable to the Vicar.—Lord Chancellor Hardwick said, that that survey was taken with a great deal of care, as the then governors were willing to get all they could—and that it had always been given in evidence in the court of Exchequer, and had been remarked as being very exact and particular. MS. Notes.

All life spell setting I appoint

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LIST

OF

OFFICERS

OFTHE

High Court of Chancery.

Lord High Chancellor of Great-Britain. CHARLES Lord Camden.

Master of the Rolls.

The Right Honourable Sir Thomas Sewell, Knt.

Masters in Chancery.

Richard Edwards, Esq; Symonds Inn. Thomas Lane, Esq; Boswell Court. Peter Holford, Esq; Symonds Inn. Thomas Harris, Esq; Lincolns Inn. John Browning, Esq; Symonds Inn. Thomas Anguish, Esq; Ditto. William Graves, Esq; Ditto. Samuel Pechell Esq; Lincoln's Inn. John Eames, Esq; Ditto. Edward Montague, Esq; Temple. Thomas Cuddon, Esq; Esfex-street.

Chief Register.
Charles Duke of St. Albans.

Deputy

d

Deputy Registers.

Richard Howard, William Bowyear, jun. Esqs. deputy registers for the Lord Chancellor.

Thomas Eld, John Dickens, Esqrs. Rolls registers.

Richard Rainsford, Esq; clerk of the reports and custody of the entry books.

Francis Bowyear, Francis Dickens, Esqrs. entring clerks.

Accomptant General.

Thomas Anguish, Esquire.

Six Clerks.

- 1. Samuel Reynardson, F. R. S.
- 2. Isaac Whittington, F. R. S.
- 3. William Mitford,
- 4. Christopher Zincke,
- 5. R. Woodford,
- 6. Neh Winter, Esqs.

Sworn clerks in each respective Six Clerk's division.

Sworn Clerks in the first division.

James Clarke, Francis Douce, Henry Legh, S. Thoyts, John Seaman, John Coleman,
Francis Dalton,
Ed. Serle Hayward,
—— Harris,
Vacant Seat.

Sworn

Sworn Clerks in the fecond division.

Thomas Halfpenny, Mor. Robinson, Henry Barker, W. Trollope, William Edw. Bigge, William Hobbs, Richard Palmer, Joseph Hill, W. Mich. Lally, Jamineau Chevely, Francis Mitchell, Ab. Hilton.

Sworn Clerks in the third division.

N. Templeman, Richard Fleming, Joseph Nicholls, George Bowles, Thomas Handley, H. Brougham, John Wilson, Solomon Fell, John Cottrell, David Tancred.

Sworn Clerks in the fourth division.

William Bristow, Robert Smith,
Thomas William Baynard,
R. Chester, R. Wainwright,
Charles Frewen, Thomas Sheppard,
Phineas Andrews, Vacant Seat.

Sworn Clerks in the fifth division.

George Townsend,
Nicholas Martin,
Elb. Woodcock,
R. Bristow,
William Mears,
T. Brigstock,
— Marriot.

Sworn Clerks in the fixth division.

Jermingham Chevely, Joseph Bliffett. William Cholwich, Herbert Croft, I. Greenhill,

Daniel Fox. Thomas Metcalfe E. Boutflower.

Masters of the Subpoena Office.

Thomas Bury, Ela; Mr. William Henry Pitts, bis Deputy.

Register of the Affidavits.

Edward Woodcock, E/q; Mr. Paul Humphreys, bis deputy.

Principal Examiners.

Edward Northey, and John Spooner, Esgs.

Deputy Examiners.

Mr. Barnabas Richards, Mr. Richard Guy. Mr. Samuel Clarke, Mr. John Worth, Mr. Joseph Brown,

Mr. William Jones.

Copying Clerks.

Mr. William Langley, Mr. Jona. Langley, Mr. Dennis Fell, Mr. John Gray,

Mr. William Dance, Mr. William Butcher, Mr. Robert Scott,

Mr. John Paddon.

Serjeant at Arms.

Richard Jephson, Esq;

Warden

Warden of the Fleet.

John Eyles, Esq;

Ufber.

Dennis, Esq;

Deputy.

Mr. Charles Gold.

Clerk of the Chapel of the Rolls.

Mr. Henry Rooke.

If there shall appear to be any mistake in this list of Officers, &c. the reader is desired to correct the same.

TABLES

OF

FEES.

Subpæna Office.

	1.	s.	d.	
TOR every common subpana,	0	4	0	
For every common subpana renewed	0	1	6	
For every special fubpana, besides the duty and seal	0	6	8	
For every special subpana renewed	0	3	4	
For every loose label	0	3	6	

Six Clerks office.

The fees of the Six Clerks.

OUT of all copies of proceedings filed in the Six clerks office, for every office copy sheet			
Out of all exemplifications of bills, answers and proceedings in the same office, per skin			
For examining and figning every de-	0	17	0
		F	OT

For the custody of every bond entered into by order of court to the Six Clerk with whom the said bond is lodged

1. s. d.

† But see The fees of the Sworn Clerks and Waiting Clerks, now Stat.
30 Gzo. II. including the stamp-duty. †

FOR filing every bill, and for the rule to answer, including the Term-fee	0	5	4
For an attachment	0	6	0
For every proclamation and distringas	0	6	4
For a commission of rebellion	0		4
For a sequestration	0	15	4
For a ne exeat regno		14	10
For a habone comput	-	14	2
For a dedimus potestatem to take an answer	0	9	4
For every special dedimus by order of court	0	12	8
For a commission to examine witnesses }	0	15	4
For joining in commission	0	6	8
For every special commission for dividing lands, and ascertaining boundaries or otherwise, by special order of court		19	8
The stamps and other outgoings are included in this 19s. 8d.			
For every writ of execution upon an order, if an order of one fide	0	6	8
If more	0	13	4
If longer, then per skin, besides stamps	I	-	
For every common injunction	1	2	8
For every special injunction	I	-	0
			For

	1.	s.	d.
For every Term the cause is in agitation, the sworn clerks on each side of the cause, are intitled to a Term-see of	0	3	4
For the appearance of every defendant who appears separately by himself If two or three defendants appear by the	٥	3	4
fame clerk (reckoning husband and wife as one) the fee for appearing is	0	3	4
But if more than three, not exceeding fix defendants appearing together, their appearance fee is	0	6	8
If more than fix the appearance fee is And fo in proportion to the number of		10	0
defendants, reckoning 3 s. 4 d. for every three, man and wife still compu-			
For copies of all bills and answers, depositions and other proceedings for each sheet containing fifteen lines, and fix words in every line, including the	0	•	10
4 d. per sheet paid to the Six clerk For a rule to produce witnesses, or to pass publication and notice thereof, including the stamp duty	0	4	4
For fetting down a cause for hearing be- fore the Lord Chancellor, or Master of the Rolls, by the Six clerk, accord- ing to the right they claim for so do-	1	5	0
ing, for each cause so set down			rla.
For drawing and inrolling decrees and dismissions, if not exceeding one skin	I	13	4
The like for inrolling	1	6:	8
But if the decree or dismission be longer than one skin, then for drawing every sheet 8 d. computed at office copy sheets. And for inrolling each sheet 8 d. and then the suitor pays the 17 s. to the Six clerk.			

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	1.	5.	d.
For a writ of execution of a decree, for }	1	6	8
For attending the court on the day of hearing of every cause wherein they		6	8
Por all other attendances on the court when required, each attendance is	0	6	8
For every attendance on a Master for taxing of costs	0	6	8
For every attendance on the Master on other occasions, if required, if with with the solicitor in the cause	0	3	4
If without the folicitor, then		6	
For entering an appearance with the			
Register, according to any order of court	0	3	4
For figning their confent as clerks in court to any petition, agreement or election	0	3	4
For drawing every certificate to be figned by the Six clerk	0	2	6
for examining all copies of bills, an- fwers, depositions of witnesses, in- terrogatories or other proceedings with the records in order for evi- dence, if 80 sheets.	٦	6	8
But if more than 80 sheets, then after the			
rate of 1 d. per sheet. For the exemplification of any record (besides the stamps, the Master's feet for examining, and sworn clerk's feet for attending to examine, and hanaper feet for every standard the standard feet for every standard feet feet for every standard feet feet feet feet feet feet feet fee	1	6	8
fee) for every skin thereof For drawing and ingrossing the docquet and Master's certificate besides the stamp which is 15.	0	3	4
For attending the Master to examine exemplifications that exceed not	0	6	8
three fkins			If

7.

If

If more, then in proportion to 6 s. 8d.			
for every three fkins.			
For every writ of affiftance to put the			
	0 1	6	4
decree,			
For the copies of all deeds, writings,			
papers, letters and accounts left with			
any clerk in court pursuant to an or-	0	0	
der of court, or referred to in any	•	0	4
of the pleadings, for each sheet, com-			
puting office copy sheets,			
For every attendance to produce such			
deeds, papers, letters or accounts for	Ö	6	9
the adverse party to inspect, if no	•	U	0
copy be taken			
But if any copy of such deeds, papers,			
But if any copy of such deeds, papers, &c. be taken, then nothing is to be ta-			
ken for inspection or attendance there-			
on.			
For every certiorari, procedendo and }	_	0	
supersedeas, each	U	0	0
21.4			
Affidavit office.			
	1.	5.	d.
FOR filing, registering, copying and figning every affidavit, the			
and figning every affidavit, the	0	2	0
nrit lide			
Every other fide besides duty	0	0	8
For every copy from the office the?	^		
in it fide and fighing	0	1	4
Every other fide besides duty	0	0	4
For every certificate	0	0	0
For every fearch	0	0	
		100	

Register's office.

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OR drawing all orders each fide }	0	3	0
For copies of all orders, exceptions and }			,
petitions, the first side	0	I	6
Every other side besides duty	0	I	0
Entring orders each fide besides duty	0	0	6
For entring a cause for hearing	0	1	0
For a note to ground a subpana to hear?	•	^	0
judgment	0	0	8
For every decree	0	5	0
For every dismission	0	3	4
For every certificate	0	I	6
For the Register's hand to all certificates	0	1	0
For filing every election	0	0	4
For fearching the old books for any }			
	0	0	4
For entring an attachment or proclama-			
tion, each with duty	0	I	2
For entring all rules of course to answer,)			
produce witnesses, and for publica-	0	1	4
tion, &c. for each with duty			
For entring all amerciaments	0	1	0
	0	2	10
For entring of all bills of costs taxed)	100		
for want of a bill filed in time with {	0	1	4
duty			
For all copies of attachments, procla-)			
mations, commissions of rebellion,	0	0	4
&c. for each			
For entring all pleas or demurrers	0	1	0
Poundage for all money deposited with }	11.37		
the Register	0	I	0
For examining all orders with the en-			
tring clerks to be used as evidence at	0	0	2
law, per fide			
4		F	or

For examining all orders and reports with the clerk of the reports, and custody of the entry books to be used as evidence at law, fer side			2
For filing every report, certificate and }	0	4	0
For copies of all reports, for the first side	0	1	6
For every other side besides duty	0	1	O

Examiner's office.

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For

OR the examination of every per-	0	2	0
For copies of depositions, interrogato-			10
For every exhibit certified by the ex-	0	2	0
For every certificate	0	2	0
For the examination of any copy of de positions with the original to be given in evidence in another court For the examination of every witness,			8
upon whom the examiner attends out of the office, if near If far off, or the examiner occasioned to go often, more according to his trouble, at the discretion of the party concerned.		6	8

My Lord Chancellor's Secretary.

FOR every petition for fetting down } pleas, demurrers, or exceptions	0	10	0
For every petition for re-arguing pleas, demurrers or exceptions	0	12	6
For every petition for fetting down } causes for hearing, for each cause	1	0	Ó
F 2		Wh	tre

		1 4	
Where there are feveral pleas or demur- rers, or cross causes, then the sees are double if two, and treble if three.			01
For a warrant to the Serjeant at arms, Messenger or Warden of the Fleet	0	15	0
	0	12	6
For every petition for a letter to a Peer, and for the letter	1	5	0
For every reference on a petition to the chief justices or other judges concerning by-laws	0	12	6
	0	12	6
For a petition for an homine replegiando,		12	6
For backing each babeas corpus	0	2	0
And ne exeat regno	Ó	2	6
For each petition for a supplicavit	0	12	6
For a caveat	0		0
For copies of affidavits, according to their length, as in the affidavit office.			
length, as in the affidavit office. The door-keeper of this court.			

The door-keeper of this court.

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E receives the several following fees, which he distributes amongst the several officers who are respectively			
intitled thereto:			
For every cause heard at Westminster,			
if the bill be dismissed, the defendant \$	0	10	0
For every cause heard at Westminster, if the bill be dismissed, the defendant pays him a see of			
If a degree for the plaintiff he nave him	_		•
If a decree for the plaintiff, he pays him	0	10	0
If an iffue at law, or attornment direct- ed, each party pays	0	10	0
ed, each party pays		10	•
For every quardian admitted in court			
For every guardian admitted in court at Westminster	0	10	0
at we ejimingter			
			For

	cause heard in court at the }			6
For every Rolls in	guardian admitted at the court	0	6	0

Note; In Trinity and Easter Terms, when the Master of the Rolls sits in the Chapel, the Usher has nothing out of any cause heard, or guardian admit-ted in Term-time, which increases the door keeper's fee is. in each of the two last articles for those Terms.

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For

Secretary of the Master of the Rolls.

You pay	to the Secretary of the Ma-			
ster of	the Rolls for every petition 5s.	0	5	6
and to	the under Secretary 6d.			

Secretary of the Lunaticks.

FOR every petition for a writ de }	0	15	0
For every petition for grant of the custody	I	7	6
For each order made on hearing	1	7	6
For entering a caveat	0	5	0
For filing and copying every affidavit } for the first sheet	0	2	0
For every other sheet	0	0	8
For a copy of orders of court or pe-	0	I	6
For every other fide	0	1	0
For fetting down every petition to be } heard	0	I	0
The clerk of the custodies of ideots and lunaticks ought not to take any fee for attending the seal, hanaper or clerk of the docquets with any commission or			

grant relating to them.

N. B. There

N. B. There are many other officers and fees besides those before-mentioned, several of which are, and others are not, relative to the proceedings in equity; both which I have purposely omitted, as matters beyond the present design, and refer the reader to the order made by the late Lord Chancellor Hardwicke of the 28th day of Nov. 1743.

CHAP. III.

Of publication, and setting down causes; and of hearings, rehearings, and appeals. And first of publication.

PUBLICATION in a cause is that power or liberty which is given the Six clerks, or clerks in court, either by rules or order of court, or by consent of parties, to shew the depositions openly,

and to give out copies of them.

And when both the plaintiff and defendant have examined fuch witneffes as they think proper, and are ready to go to hearing, the clerks in court on both fides may pass publication by consent; which is done by fignifying the same in one of the Rule books in the Six clerks office, upon which publication immediately passes. Or where witnesses are examined in court by the examiners, they may give each other rules for publication; first an ordinary rule, to produce witnesses, and then another rule for a day to fhew cause why publication should not pass: But if the witnesses are examined on both fides, upon a commission, one rule only is sufficient; and the day given by fuch rule is a week, which being expired, and no good cause shewn to the contrary, publication passes: And either party that has examined, and would have publication pass, may give the rule.

The cause being at iffue, and one side having examined witnesses, but the adverse party having not,

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nor had a commission; the other party is to give him first a rule to produce witnesses, and after that a rule to pass publication; and if the other side want to examine, they may petition or move the court, and obtain an order to inlarge publication, and for a commission to examine, if in the country; or if in town, they may examine them in the examiner's office; but if they do not examine them within the time limited for inlarging publication, then publication passeth: And such rules for publication are proper to be given where witnesses are examined in court for the plaintiss, or ex parte by commission, or where none are examined on either side, to conclude the adverse party from examining.

After examination of witnesses, publication may be stayed or inlarged, by motion or petition, on

reasonable cause shewn.

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The court, on cause shewn, and sometimes on a bare motion, will inlarge publication; but it must be on notice, and upon good reason offered to the court, and upon affidavit shewing the reason why the party could not examine his witnesses sooner; and it is feldom or ever done where it is to put off the hearing of the cause; but where the cause is not fet down, or where the party is not ferved with a subpana to hear judgment, there the court will inlarge publication for asking. In some other cases they will do it, though the cause is set down, and party served to hear judgment; but this, when it is shewn to the court that it is not possible for the cause to come on very foon, and the court will expect the party to appear graits to hear judgment on fix days notice to his clerk in court, and pray no day over, and will often oblige him to take no advantage for want of parties at the hearing: I his forwards the plaintiff; for if a defendant is made at the hearing, a decree cannot be made absolute till the next succeeding Term. But if the party who moved to in-F 4

large publication, will not agree to appear gratis, he is often denied his motion; for it feems he only intends delay, which the court always avoids when it

is in their power.

Where publication is actually past, and the depofitions delivered out, if the adverse party moves to inlarge publication, he must offer good reasons by affidavit of some material witnesses, and the reasons why they could not attend and be examined before

publication paffed.

And in this case the party must make oath, and so must his clerk and solicitor, that they have never seen, read, nor been informed of the contents of the depositions taken in the cause, nor will they, &c. till publication is duly past; and on such affidavit it is usual to inlarge the publication, and give the party opportunity to examine witnesses; but he is limited to a time, and so as not to put off the hearing; and where that is not the case, it would be hard to drive defendant to hear his cause without

proof.

There was a remarkable instance in Lord Somers's time, where an artful folicitor got copies of his client's depositions, and immediately went with them to the adverse solicitor, and shewed him the depofitions; and to make fure work of it, read them over to him: His adverse party being ignorant of the rule, told him, they must notwithstanding have an opportunity to examine their witnesses; and foon after bringing his witnesses to the examiner's office, was told they could not be examined, because publication was paffed, and the depositions delivered out; the man being furprized at this, went to his clerk in court to know what he was to do, and being startled at hearing of the affidavit that was requifite, told him the whole story, which being laid before the court, the court inlarged publication, and gave the party an opportunity to examine

examine his witnesses, and the adverse party narrowly escaped commitment for this male practice.

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As concerning publication of depositions taken de bene esse, it is when the party is either beyond sea, and not returned, or is dead; in which case, upon producing and proving the register of his death, order may be had by petition or motion for publishing his depositions, and the certificate of the death of the witness must be annexed to the petition. cannot be done without fuch order; and the party must shew he died before he could be examined in chief; and the court will not only order the depofitions to be published, but to read him as a witness at the hearing, faving just exceptions; and notice is always to be given to the adverse party hereof. notice is to prevent surprize, and to give him an opportunity to object as he shall see occasion. if the witness be beyond sea, and not returned, there must be an affidavit of it, and that the party has not heard from him of fuch a time, nor does he know whether he is living or dead; and in this cafe there will be a like order as in the case of a witness who died before he could be examined in chief.

Note; Rules are entered with the register in the following manner, together with the date when entered, and the clerk in court's name; but they are to be entered in Term-time only.

A day is given to the defendant to answer.

A day is given to the defendant to make a better answer.

A day is given to the defendant to produce witnesses.

A day is given to the defendant to shew cause why publication should not pass.

A day is given to the defendant for passing publication upon a joint commission.

And observe that these rules must also be entered ni the rule book belonging to the Six clerk, where

the cause originally began, though the clerk in court who enters them should be of another division; and after they are so entered in the house book, the same are also to be entered with the Register as aforesaid; for which 1s. 4d. is paid, and then notice thereof is given in writing to the adverse clerk in court.

After a rule is given to pass publication on a joint commission returned; an order, before that rule is expired, may be obtained (on petition to the Master of the Rolls without any affidavit) to inlarge publication, but not to hinder setting down the cause.

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When publication is past, the depositions copied and delivered out, if either party is minded to examine to the credit of any of the witnesses, the way is, (for the rule of evidence is the same in equity as at law; if the party cannot be good evidence in law, no more can be be in equity) they must file objections, or articles fo called, in the examiner's office, which must contain in substance the objections made to the reputation of the witness; as in case of felony, burglary, pillory, perjury or forgery, or any other criminal case, that would disable the party from being a good witness at common law: Or these articles may be founded on the party's leading a lewd life, or being a common drunkard or swearer, or of ill repute and character in his neighbourhood; a common vagabond, a man unknown, of no abode, or fuch Though these latter objections seldom come to any thing; for notwithstanding all this, the man is a legal witness, and the court will hear his evidence, and judge of the probability and improbability. Accordingly these articles being filed, and a certificate from the examiner that they are fo, the court on application by motion or petition, or indeed it may be done without, will permit the party to examine witnesses thereon; and the other party is to support the credit and reputation of his witnesses, and may examine accordingly toties quoties, and their depofitions'

note,

fitions must be published, as in other cases; but this case rarely happens, and generally ends in an unnecessary expense.

If both parties examine a witness, neither can afterwards object against reading him; for they have by

the examination established his evidence.

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Matters examined to in the original cause, and publication passed, cannot be examined to in the cross cause. *Moseley*, 382.

Setting down causes.

HE plaintiff may of course have the cause set down for hearing before my Lord chancellor, or Master of the Rolls, the Term next ensuing after publication; and by special order the same Term publication passes: And if the plaintiff omits setting down his cause the next Term after publication is past, it may be set down at the request of the defendant the next following Term.

No motion is to be made to hasten a cause to a hearing, nor cause entered with the Register for hearing, without a certificate from the Six clerk that the pleadings are filed.—The Six clerks usually give notice to the fworn clerks, when they intend to fet down causes, who thereupon apply to their respective Six clerks, shewing them the depositions published, and leaving with them a short account in writing, of the nature of fuch causes as they would have fet down to be heard, for which the clerk in court charges his client one pound five shillings, if fet down at the Rolls, and one pound ten shillings, if fet down before the Chancellor; but otherwise, if they are fet down by the Register, in which case you must obtain the Six clerk's certificate, and therewith apply to the Register, who will set down the cause, and make you a note for grounding subpana's to hear judgment, which you annex to the subpana note, and on leaving the same at the subpana office,

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have subpæna's made out.

If a cause is adjourned over for want of parties, though the defendant is served with the order, he must be served with a spa to hear judgment. Mose-

ley, 226.

It may not be amis here to observe, that the day a cause is set down to be heard on, must be sooner or later, according to the priority of publication, with respect to causes presented for hearing; and the causes set down to be heard are entered in the Register's book: And they are to keep in their office a book wherein are entered all causes, pleas, demurrers, exceptions to reports, and the like, that are ordered to be fet down for hearing; and in order thereto, all clerks, folicitors and others, are to bring to the Register's office in due time, all orders for fetting down of causes, pleas, demurrers, exceptions to reports, and the like, otherwise they will be respectively put off from hearing for that time, and shall not come on again to hearing without farther order.

Subpana's to hear judgment must be made returnable, and served at least ten days before the day of hearing, if the defendant lives in London, or within ten miles thereof; but if the defendant lives in the country, he must be served fourteen days before the return thereof; and on the back of the writ must be set down the very day appointed for hearing.

A fubpana to hear judgment is either to be served personally, or else left with one of the house or family of the party; and if above twenty miles from London, it must be served fourteen days exclusive before the time to hear judgment, except in the short Vacation between Easter and Trinity Terms, and then ten days. Vide Ord. Chan. 116. But if within twenty miles of London, if it be served ten days before the time to hear judgment, it is generally sufficient; and in the short Vacation it must be served

served ten days before the return; and an affidavit of service is requisite, because of the costs to be

paid for not appearing, &c.

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be ed If the plaintiff procures the cause to be set down for hearing, but does not serve the desendant with a subpana to hear judgment; if the desendant attends, and the plaintiff does not proceed, or go on in hearing the cause, in that case the cause is struck out of the paper, and no costs is given on either side; but if the plaintiff serves the desendant with a subpana to hear judgment, and the desendant makes and siles an affidavit of such service, and the cause being in the paper, and the plaintiff's counsel does not open the bill; then upon reading the defendant's affidavit of such service, the court will dismiss the plaintiff's bill with costs to be taxed.

But if the cause be set down at the defendant's request, and the complainant appeareth not, the defendant can take no advantage of it, unless the subpana to hear judgment appears to have been served on the plaintiff; and otherwise the plaintiff is in no default; But if the plaintiff resules to appear and open his bill, on reading an affidavit of service, the court will dismiss the bill with costs to be taxed.

Commonly, if the party who hath a cause to set down for hearing, is not ready to hear it at the day, but desires it may stand over to a farther day, he must pay the other party the costs of the day, if the court thinks sit to indulge a farther day. Yet when a cause is set down at the defendant's request, if the plaintiff (not being served with process to hear judgment) and his counsel attend, and the defendant with his counsel do not, the plaintiff shall have no costs, as he was not compelled to appear without service of a subpana to hear judgment, and the defendant might chuse whether he would go on to have the cause heard, or not.

It is necessary to have an affidavit of service of the subpana to hear judgment ready at the hearing,

De hearings.

fo that service may be proved if the desendants should not attend; but this affidavit is sometimes not filed till after hearing; for if the desendants attend it is useless: But if there be the least suspicion of the desendant's counsel not appearing at the hearing, the affidavit of serving the subpana ought to be filed before the hearing; for the court may resule to give judgment for want of the affidavit being filed.

Affidavit of ferving a fabpaina to hear judg-

Between A. B. complainant, C. D. defendant.

In Chancery.

E. F. of, &c. — maketh oath, That he this deponent did on the — day of — last past personally serve the said defendant with a subpæna issuing out of and under seal of this honourable court, by which said subpæna the said defendant was required to appear in this honourable court the — day of — now last past, to hear judgment the — day of — aforesaid, at the suit of the complainant above named, by delivering the body of the said subpæna to the said defendant under seal as aforesaid.

E. F.

Sworn, &c.

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Hearings.

BY order upon consent, the parties may appear, answer, and go to hearing gratis; and so they may do without order, save only for so much as breaks in upon the common course of the court, as time for publication, &c. which cannot be altered by consent, without a special order for that purpose.

The cause being set down, and standing in the paper for hearing, the clerks in court, and solicitors on both sides are to attend the court with the pleadings, that the same may be read as occasion requires, &c. And all office copies are to be signed by the respective Six clerks concerned in the cause, otherwise they will not be suffered to be read.

The

The method of hearing causes in court is generally thus: The parties on both sides appearing, one of the junior counsel for the plaintiff opens the bill, and another for the defendant opens the answer; after which the plaintiff's senior counsel states the case, and the matters in issue, and briefly touches on the proofs; and then they proceed to read first on the plaintiff's side, and then on the defendant's, the proofs to such material points as are controverted; the counsel on each side debating the matter either of law or equity, that arises thereupon, the plaintiff's counsel always concluding the argument, after which the court pronounces the decree, the minutes of which are taken down and frequently read in court by the register.

If the defendant or his counsel do not appear at the day of hearing, on affidavit being made that he was served with process to hear judgment, the cause is to go on; viz. the bill is opened, and the beginning of the defendant's answer read; and if the matter appears plainly for the plaintiff, the court will make such decree as the plaintiff's counsel prays: But a day in such case is always by the court given to the defendant to shew cause to the contrary against the decree so pronounced, commonly with these or

the like words, viz.

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And this decree is to be binding to the defendant, unless he being served with a subposena to show cause against the said decree shall at the return thereof show unto this court good cause to the contrary; but before he is admitted to show such cause, he is to pay unto the plaintiff his costs of this day's attendance to be taxed by the Master. And the decretal order is to be drawn up accordingly; and before he is admitted to show cause against it, he shall produce a certificate from the plaintiff's attorney in court, That the costs are paid, or an affidavit of the tender and refusal; after which he may petition that the cause may be set down again to be heard.

The

The decree nist causa being drawn up, passed and entered with the Register, the plaintist sues out a subpana against the desendant to shew cause against the decree, and serves him therewith, as in other subpana's; but this writ being a judicial process, it must and always is made returnable in Term-time; if it should be made returnable out of Term, or at any of the Seals, as was once done, it would be set aside for being irregular: The words of the subpana are to shew cause according to the order of the court, bearing date such a day and year, &c.

There is no prefixed time for the service of this subpana, nor how many days notice the defendant is to have between the service and the day to shew cause; it were to be wished that it might be as in case of subpana's to hear judgment: Though indeed, where the decree is made at any of the days of causes within the Seals after Term, there the party has timely notice to shew cause; but when the decree is pronounced in Term-time, the party, if the subpana is made returnable the same Term, as it may be, has but a very sew days left to shew cause against the decree, and is sometimes straitened to do it.

If the defendant submits to the decree unless cause, then upon an affidavit of the service of the subpena to shew cause, and upon a certificate from the Register that no cause is shewn, the plaintist's counsel move to make the decree absolute on the affidavit and certificate, which is a motion of course.

If upon a hearing the plaintiff doth not appear, the defendant upon making an affidavit of being ferved with a *fubpana* to hear judgment at the plaintiff's fuit (except the cause was set down at his request) the plaintiff's bill shall be dismissed with costs.

Where there are cross causes, they shall be brought on to a hearing together, if the answer in the last commenced cause be come in before the first

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cause is heard: But if there be cross causes on bills exhibited by each of the parties, and both suits be published and ready for hearing; that party's cause that doth not serve process, shall not come on at the same time with the other, except the other party consents to it. And if several co-incident causes are brought to hearing at the same time, a decree may be against one who is no party to some of the bills.

2. Chan. Ca. 234.

A necessary defendant being beyond sea, upon affidavit made thereof by plaintiss, and that he knew not whether he was alive or dead, (it was his father) he had an order on motion to proceed against the other defendants without prejudice, and afterwards had a decree without bringing such defendant to hear-

ing. Vern. 487.

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After a decree in a cause, you may have it referred to a master to see whether it was set down irregularly

for hearing. Mosely, 44.

A bill was brought by the devisee of lands to perpetuate the testimony of a will, and to establish the will. Bill dismissed with costs. 2 Will. Rep. 162. [For more relating to this head, vide 2 Vol. Abr. Eq. (A.) 490.]

Rehearings and Appeals to Lord Chancellor, &c.

If either party apprehends himself aggrieved by a decree, he may petition the Chancellor for a rehearing, in case the cause was heard before his Lordship; but if it was heard before the Master of the Rolls, then application may be either made to his Honour, by petition, for a rehearing before him, or to the Chancellor, by petition of appeal; but it is usually to the Chancellor. And if the decree be made by one of the judges, deputed by the Chancellor to sit in his absence, then the party apprehending himself aggrieved, may also apply to the Chancellor Vol. 11.

by petition of appeal for a rehearing before his Lordship. And the petition is to be signed by two counsel, one whereof is to be of good note in court, or must have been counsel in the cause, shewing and stating the matter for a rehearing, and the reasons why the party apprehends himfelf aggrieved by the faid decree, and fignifying, that they conceive there is good cause for the same; upon which the court will, at any time before the decree is figned and inrolled, order the cause to be reheard: But the petitioner must deposite ten pounds with the Register, nine pounds ten shillings whereof is generally returned him, if he prevails in the rehearing, though the court sometimes orders it to be divided; and as to the remaining ten shillings it is the Regifter's poundage, he having twelve pence in the pound for all money deposited with him, on his repaying it. On a rehearing being ordered, the cause is commonly fet down for a certain day on which it is to be reheard; and two days at least before such day, the petitioner is to leave for the Chancellor for Master of the Rolls, if the application was to his Honour) a true copy of the decretal order appealed from, and also of the petition for rehearing; for which you pay five shillings on leaving the same.

Held clearly by Lord Chancellor that upon an appeal, either from the Rolls to his Lordship, or from him to the House of Lords, no new matter not in iffue should be insisted on, Trin. 1710. Prec. in Chan. 295.— but afterwards in Trin. 1718. The Lord Chancellor held, that on an appeal from the Rolls to his Lordship, the cause is open, and the party is at liberty to read new proofs, and offer what he can against the decree. Ibid. 496.—
Gilb. Eq. Rep. S. C. and p.— The rule is, that on an appeal the whole case is open. Trin. 1725. Sel. Ca. in Chan. 24.—Vid. ibid. 48.

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An appeal from decrees made in the plantations hes only to the King in council. 2 Will. 261.

It is in the discretion of the court whether or no they will grant a rehearing.—And it is equally fo, whether they will do any thing thereon. 3 Will.

Rep. 8.

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If a matter of fact be mistaken at the hearing, &c. it is to be set right by rehearing, and not otherwise. I Chan. Ca. But if it be a small mistake, it is sometimes rectified by petition to the Lord Chancellor, or Master of the Rolls, who heard the cause; praying that all parties, with the Register, may attend with the minutes, and that his Lordship, or Honour, would rectify the same: On which an attendance is ordered; and the court make an order for rectifying the said minutes, if they see cause.

But the granting a rehearing shall not stop or hinder proceedings on an order or decree appealed from, without the special order of the court for the

fame. Ord. Chan. 208.

In the case of *Howard* v. *Colley*, it was ruled, that on an appeal the whole case is open; but on a rehearing only so much as is petitioned against; and if all do not petition, it is only open to the petitioners. *Trin.* 11 Geo. 1.

No proof to be read upon a rehearing that was not read upon the hearing. Vill v. Lane 1726.

Matters of account admitted before the Master shall never be allowed upon an appeal. Chatham v. Leigh 1705, and Mayor, &c. of Hertford v. The Poor of the said town 1713.

No appeal lies for costs only. Carr v. Parrall

1727.

You may appeal to the Lord Chancellor or to the House of Lords for costs only, tho' the old practice was otherwise. Mos. 395. pl. 203.

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When a caveat is entered to prevent the inrollment of a decree, there ought to be a rehearing before an appeal.

None but parties are intitled to an appeal. Vill

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v. Lane 1726.

The court will not rehear a cause after a decree figned and inrolled, notwithstanding the cause had been open since the inrollment. 2 Chan. Rep.

An agreement was figned by the parties, and by consent made an order of court to submit to such decree as the court should make, and neither party to bring an appeal; yet the cause was allowed to be reheard. 3 Will. Rep. 242. Buck v. Fawcett.

Sir Geo. Downing brought an appeal in Parliament, from a decree in Chancery by consent, suggesting, that though the Register in drawing up the order, had drawn it as a decree by consent, and the minutes were so too; yet he never did consent to such decree, nor his counsel neither; or if they did, it was without his authority, and made affidavit of it; but the appeal was dismissed. Hill, 1699, between Downing and Cage.

The Parliament being prorogued, you may proceed in the account in Chancery, notwithstanding the

appeal. Vern. 344.

No appeal to the House of Lords from a sentence by the delegates, or from a decree upon the statute of charitable uses. 2 Vern. 119.

New trial granted by the House of Lords. 2 Verm.

378.

If a decree be inrolled so that the cause cannot be rebeard, there is no remedy but by bill of review, which must be on error appearing on the face of the decree, or matters subsequent to the decree, as a release, or a receipt discovered since. 3 Will. 371.

In the case of Aribur Onslow, Speaker of the House of Commons, King, Chancellor, on the circumstances

refused to discharge an order for rehearing at the distance of 24 years. 2 Will. Rep. 8.

If after hearing a witness is convicted of perjury, advantage may be taken of it on a rehearing.

2 Vern. 463.

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On a new bill to carry a decree into execution, the court may vary what it thinks proper. Vide Sel. Ca. in Chan. 13, 14.

[For more concerning rehearing and appeals, wide

2 Vol. Abr. Eq. p. 81, 419. (B.)]

A petition of appeal to the Chancellor.

Between A. B. esq; and C. D. gent. plaintiffs, executors of C. B. esq;

T. R. esq; - - - - defendant.

To the right honourable — Lord High Chancellor of Great Britain.

The bumble petition and appeal of the defendant T. R.

Sheweth,

and for several years afterwards, employed by the plaintiff's testator C. B. as his solicitor in law and equity, and also as his agent in divers other affairs, and particularly in getting the testator a customer or chapman for his place as —, and in a suit which the testator prosecuted against one —— for the recovery of a debt of about 1500 l. and which was looked upon as difficult to be recovered.

That your petitioner behaved himself in all the faid affairs honestly, diligently, and with good success, and to the great satisfaction of the testator.

That

That your petitioner about the — of April—— delivered to the testator bills of particulars of his costs and charges, in which bills such business as your petitioner had done as his agent, as well as the law charges, were inserted and included, and in which bills your petitioner had brought to account all the sums of money which he had ever received from, or on account of the testator; upon the delivery of which said bills, the testator promised that your petitioner's bills should be paid when the debt due from the said — was recovered.

That the faid — debt was recovered, in which recovery your petitioner had been very useful to the testator; but your petitioner's debt was not paid, and then the testator was pleased to propose to your petitioner, that your petitioner's bills should be first perused and examined by Mr. - and Mr. - being persons skilful in such affairs, and that then your petitioner's debt should be paid: To which propofal your petitioner readily submitted and complied; and they did accordingly perufe and examine the fame, and found that your petitioner had brought to account all the monies that he had received, but made feveral objections to feveral items in your petitioner's bill, which they reported to the testator, and informed and laid before him fuch their objections, and their reasons for making

That the testator, after he had considered of the said objections, and the reasons of them, declared that he would not make any abatement of the said bills on account of the said objections, or to that effect.

those objections, leaving it to the testator's discretion, whether he would allow or disallow of the

fame.

That the testator, after he had sufficient time to peruse and consider of the said bills, and had caused them to be examined into and shewn to such per-

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That your petitioner apprehended that the faid account was then closed, and your petitioner's pro-

perty in the faid debt fixed and ascertained.

That upon the death of the testator, the plaintiffs were so far from making any objections or dispute to your petitioner's faid two debts, that they, by Mr. — their folicitor, made your petitioner feveral promises that your petitioner's debt should be paid and fatisfied; but notwithstanding the faid promises, and before your petitioner had begun or commenced any action at law, the plaintiffs in or about — term — exhibited their bill in this honourable court against your petitioner, to set aside the said stated account, and to have your petitioner's bill taxed, and to have a general account of all monies received and paid, and to have an injunction to stay your petitioner's proceedings at law; but the plaintiffs did not by their bill charge any G 4 particular particular fraud or ill practice on your petitioner in or about the obtaining the faid flated account, nor shewed any reason why the same should be set aside, save only that they suggested by their said bill, in general terms, that your petitioner's bills of costs and charges were unfair and unreasonable, and that the testator was prevailed on to allow the said bill, and to sign the said account by fraud and imposition, and when the testator was not capable of judging rightly what he did, and within the time when the testator, by virtue of an inquisition found and returned upon a commission of lunacy, had been adjudged to be a person of such unsound mind, memory and understanding, as to be incapable of managing himself or his estate.

To which bill your petitioner put in his answer, and thereby denied all manner of fraud and ill practice in obtaining the said stated account, and infisted the same ought to stand, and not to be ravelled into; and as to the said inquisition found on the said commission of lunacy, your petitioner infisted that he was not bound thereby, being no party thereto, and that the same ought not to be allowed as evidence to conclude him; and that your petitioner had brought his action at law to recover his said debt, where the matter of sact whether the testator was compos mentis, or not, was properly triable by a jury, and where the complainants might make

their proper defence.

That iffue being joined, witnesses examined, and publication passed, the said cause was heard before his Honour the Master of the Rolls on the day of , when his Honour was pleased to order and decree, that the said stated account should be set aside, and referred it to a Master to tax your petitioner's bills of sees and disbursements included in that stated account, as also his bill of sees and disbursements delivered since the said stated account.

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By which decree your petitioner conceives himfelf aggrieved, so far as concerns the setting aside the said stated account, and the new taxing your petitioner's bills included therein.

Your petitioner therefore humbly appeals to your Lordship from that part of the said decree, and humbly prays your Lordship to rehear the said cause, and to appoint some short day for that purpose.

And your petitioner shall ever pray, &c.

We bumbly conceive that this cause is proper to be beard before your Lordship, if your Lordship shall think sit.

A. B,
C. D.

CHAP. IV.

Of dismissions and decrees; and of drawing up, inrolling, executing, exemplifying, and reviving decrees.—And first of dismissions.

A Dismission is the sentence of the court, whereby the plaintiff's bill is ordered to stand dismissed, and is adjudged unfit for the court to take cognizance of: Also it may be in many cases where the court hath cognizance of the cause, yet finds no equity proper for the plaintiff's relief, and therefore dismisses the plaintiff's bill.

And dismissions are usually prayed and procured upon motion, and had upon the defendant's answer and disclaimer, and sometimes on a plea or demurrer, or on the merits at the hearing; and not after examination of witnesses before the hearing; though

upon

upon a discontinuance of prosecution, by special motion and order of court a dismission may be had.

Before appearance the plaintiff may obtain leave to dismiss his own bill; so after appearance, and before answer, or after answer and before the parties have examined witnesses, the plaintiff may generally of course, on motion, have leave to dismiss his own bill with costs. And if the plaintiff dismiss his own bill, or the defendant dismiss it for want of prosecution, the plaintiff must, by the late statute for Amendment of the law, pay full costs to be taxed by a Master. 4 & 5 Ann. c. 16.

A cause may be dismissed for vexation by reason of a double proceeding, as if the plaintiff sirst brings an action at law, and then his bill in this court for the same thing, &c. though he may proceed here, his proceedings at law being stayed by injunction; and if the plaintiff forbear prosecuting his suit here, or does any thing which seems to make himself a judge of the matter in question, these are causes of

dismission.

As concerning elections to be made, where a man brings his action at law and his bill in equity for the same matter, defendant must first answer the bill, and then put the plaintiff to his election in which court he will proceed; and this is a motion of course, he has by the order served on the clerk eight days, to shew cause against making his election. If he elects to proceed at law, his bill in equity stands dismissed with costs.

If he chuses equity, then an injunction issues to stay his proceedings at law: This election is filed in the report office, and signed by plaintiff's clerk in court, and is the authority for making out the injunction.

But still this election does not hold in all cases; for if the suit in equity is not for the same matter, there shall be no election. If the bill is a bill of dis-

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covery, and no relief fought thereon, there is no election; for perhaps from that discovery he may be able to proceed in law, and without it cannot.

Upon this head there feems to be a plain railure of justice, (which hitherto has never, as we know of, been taken notice of) as for example: Suppose the plaintiff elects to proceed in equity, and his bill upon hearing is difmiffed, either with or without costs, all the benefit the defendant who is doubly vexed by it has, is only to have his costs, and plead it in bar to any new bill brought against him for the fame 'matter; (for a dismission upon an interlocutory order is not pleadable) but his injunction for flaying proceedings at law is gone by the difmiffion; and the plaintiff is in that case at liberty to proceed at law, which the court never intended, when they put him to his election. Now he elects to take his fate in equity, finds that court against him; and when he has done there, he may take another turn at law, which is a great hardship; and it were to be wished, that the wisdom and justice of the court would remedy it; for the order of election is, that the plaintiff is profecuting at law and in equity for one and the fame matter; and therefore he is called on by the justice of the court to elect in which court he will proceed; but still he is not to proceed in both courts.

Plaintiff is not bound to make his election till de-

fendant hath answered. i Vern. 103.

Where a plea is put in to a bill, though there is an answer, the bill cannot be dismissed for want of prosecution, till the plea hath been argued. Barnard. 280.

A cause being ended by agreement or arbitration, without proceeding on the bill, order will be given to dismits the bill.

A dismission may be upon the plaintist's own prayer; and is often upon hearing the cause, where

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it appears that the merits thereof are improper for

a court of equity.

And dismission upon hearing is sometimes for want of parties, sometimes because the matter belongs to another court to determine; as to the courts of law, or ecclesiastical courts, or that the cognizance thereof belongs to another court of equity; as the universities, and cinque ports, &c. or for that the matter in demand is below the dignity of this court, either in respect of its value, as under ten pounds, or in respect of its nature, being in itself dishonest, or accompanied with fraud, corruption, or oppression, or having an evil tendency, or for want of equity, &c.

As to difmissing bills for want of parties, the distinction seems to be this: Where the parties omitted are really interested, and such as have a right by their answer to controvert the plaintist's title, and draw the cause to a fresh examination, there the bill ought to be dismissed with costs; but where the parties omitted must be added merely for form, there the cause may be adjourned on payment of costs of the day, and the bill amended, and

proper parties added.

If a dismission be decreed upon a full hearing, and drawn up, signed and inrolled, it may not be altered by any motion or order afterwards made for retaining the cause, but only by a bill of review; nor shall a new bill be admitted but upon affidavit of new matter, (as in the case of a bill of review) and a special order of court made thereon.

Probable cause of suit may induce the court to spare costs, when the plaintiff is dismissed on the hearing; though if on such dismission there appears no such probable cause, &c. the plaintiff commonly

pays full costs to be taxed.

Upon a dismission with full costs, the costs are to be taxed by the Master to whom the taxation is referred,

referred, and his report is to be had therein; and then without confirmations of the report, the same being filed with the Register, you may have a sub-pana for your costs, upon which, if they are not paid, process of contempt shall issue, as in other cases: And where a bill is regularly dismissed of course, or by order, for want of prosecution, &c. the same cannot be retained without special order of the court, which is seldom ordered without some extraordinary reason be given, and in that case the court orders the plaintist to pay such costs to the defendant as they think proper.

You cannot apply to the court to dismiss a bill for want of prosecution till after the end of three terms, exclusive of the term wherein there was any proceeding; as putting in the answer, serving a sub-pana to rejoin, filing a replication, and the like; and with regard to dismissing bills for want of prosecution, see before Vol. 1. under the title Replica-

tions and rejoinders.

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In case of a dismission, which was not upon hearing of the cause; if any new bill be irregularly brought, the dismission is to be pleaded: And after reference and report of the contents of both suits, and consideration of the cause of the former dismission, the court will order the retaining or dismission of the new bill, according to the justice and the nature of the case. And observe, that touching the causes of dismission and retainer, this court exercises a discretionary power therein. Vide Ord. Chan. 144. Cary's Rep. 76, 110, &c.

The plaintiff filed a bill in the Exchequer, which was dismissed, and now brought the same bill in this court, which the defendant moved might be dismissed with costs; but the Lord Chancellor, on consulting the Register, said, it could not be dismissed on a motion, but the defendant must plead to it; and then it is referred to a master, to see

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whether it is the same bill, or not; but if a bill is depending here, and a second brought for the same matters, the desendant may move, that it may be referred to a master to see whether they are the same, and to dismiss one. Moseley, 268. pl. 154. Anon.

In case there be several defendants who defend the suit severally, by different clerks in court, costs of dismission must be paid to as many defendants as

have imployed their feveral clerks in court.

When, by order of this court, proceedings are had at law, as to try the iffue, or the like, the party shall have his costs at law allowed, as well as his costs in this court. But upon a dismission of a bill here, whilst the defendant prosecuted at law upon a bond, this court refused to give him his costs at law, because he should recover them there.

Bill dismissed, principally because the plaintiff did not come into this court till after verdict and judg-

ment. 2 Chan. Ca. 95. Lee against Boles.

Where a bill is difmissed, no motion will be heard to retain it till costs of the dismission be paid and

certified by the attorney on the other fide.

If the plaintiff delays his cause, and defendant moves to dismiss the bill, the court will not always grant this, according to the circumstances of the case; but sometimes will only order the plaintiff to

speed his cause.

Suits grounded on noncupative wills, long leafes tending to perpetuities, estates purchasers, brokages for marriages, agreements for play or wagers, bargains for offices contrary to the statute of Edw. 6. or for simony, or usury, are dismissed on motion, if they take up the whole matter of the bill, and no special cause to induce the court to allow procedure.

If plaintiff disavows, the bill is dismissed. Chan. Ca. 348.

Dismission upon an election to proceed here or at law, is not peremptory, but plaintiss after failure at

law, may bring a new bill. 2 Vern. 32.

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When a cause is brought to hearing, after issue joined and witnesses examined, the court sometimes makes a decree for the plaintiss, as to some points contained in his bill, but dismisses his bill as to other points, and sometimes orders the plaintiss to pay costs to the defendant, for so much of the bill as is dismissed, to be taxed by the Master; and sometimes orders the defendant to pay the plaintiss costs to be taxed, for so much of the bill as is decreed for him, as the court shall adjudge proper.

Where a plea and answer are put in to a bill, no dismission can be for want of prosecution till the

plea is argued. Barn. Rep. in Chan. 280.

And sometimes, upon a full hearing, the court will, upon pronouncing a decree for the plaintiff, order the defendant to pay him his costs to that And if the court refers matters to a Master, as accounts to be taken, or the like, between plaintiff and defendant, the court commonly referves costs in those cases till after the Master hath made his report: And after the Master hath made his report, the court gives either party liberty to apply for farther directions, as they shall think fit, whereon such order shall be made as shall be just: In which case, after the Master hath made his report, and the fame is absolutely confirmed by the court, either party may apply by petition to the Lord Chancellor to have the cause heard on the Master's report, as to costs, which is always granted of course, and that order being drawn up and served on the adverse clerk in court, and the cause being fet down by the Register to be heard upon the Master's report, the court will order costs to be taxed by the faid Master, and paid by such party as the court shall think proper.

Bill of revivor brought by a wrong description of plaintiff, a second bill brought, and demurrer thereto.—The master on reference reports they are for the same cause, but in different rights; the former to be dismissed with costs generally, not with 20 s. costs. Barnard. Chan. Rep. 83, 4.

(a) See Mafter of the Rolls in Vol. I.

Of (a) decrees.

A Decree is the final order of this court determining the right of the matters in question, upon a full hearing, agreeable to equity, and order-

ing the parties accordingly.

And it is pronounced in open court by the Lord Chancellor, or Keeper, or Master of the Rolls; and it is minuted down by the register then sitting in court, who afterwards usually reads the same to the court, and if any mistake do thereupon appear, the same is forthwith rectified.

A decree may be altered upon a proper application in the term it is pronounced, without a rehearing. Vaughan against Blake, 3d of May 11 Geo. 1.

7 Vin. Abr. 400. pl. 25.

Afterwards the register being applied to, and a brief of the pleadings being left with him at the office; he thereupon draws up the decree in form, according to the pleadings and minutes in the cause, and commonly issues a note to the adverse party, that he may take a copy, if he thinks sit, and attend him before the same is passed. But usually the solicitor or clerk in court for the defendant, soon after the decree is pronounced, and before the same is drawn up by the register, marks the register's book for a copy of the order, and as soon as the register has drawn up the order, and the other side hath perused and returned it to the register, he makes a copy thereof for the defendant, and the defendant having returned his copy, the register will grant a

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note of the time when he will pass (a) the same, a (a) You cannot move copy whereof is usually served on the adverse party. on a decretal

is paffed with the Register. Moseley, 71.

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And if the register do alter or not pursue the minutes, then, and then only, the court may be applied to, to have the order fettled according to the minutes.

The decree being passed, is to be left with the entering register to be entered within —— months, or elfe you will be obliged to obtain an order that the same may be entered nunc pro tune; after which it may be figned and inrolled: And until it be figned and inrolled, it has only the force of an interlocutory order; and is not final, but may be altered upon a re-hearing, or fometimes upon motion or petition.

It is a rule, that when a decree is entred by consent, the merits after shall never be inquired into, unless there be an objection that the word confent be struck out of the order. Vide 2 Vol. Abr. Eq. 279. cap.

31. Ca. 1. If after pronouncing a decree, a caveat be entered by either fide, to stay the figning and invollment of it, the caveat stays the figning and inrolling for twenty-eight days after prefenting the decree to the Chanceller to be figued and inrolled; and notice given by his lordship's secretary to the adverse clerk in Vide I Will. Rep. 609.

And no decree, or dismission, shall be presented to the Lord Chancellor or Master of the Rolls to be figned, until the fame be figned by the fix clerk in the cause, or his deputy.

And if any decree, dismission or injunction be made or granted by any of the Judges fitting in Chancery, it must be figned by them, or such of them, as shall make the same, and after by the VOL. II. ChanChancellor, before it be effectual. Vide Ord. Chan. 48, 56.

Observe that every decree, &c. must, before in.

rollment, be figned as aforefaid.

And decrees, and dismissions made at the Rolls, or at Westminster, on such days as the Chancellor is not present, being drawn up, are first to be signed by the Master of the Rolls, or the Judge, that sat the hearing of the cause, and then presented to the Lord Chancellor to be by him likewise signed; which done they may be inrolled.

By the ancient practice of the court, there was no time limited for figning and inrolling a decree: But now the decree is to be figned within fix months after the last order made; if afterwards, it is pe-

titioned for.

Note; An order may be obtained either upon a motion, or petition, to fign and inroll a decree num pro tunc; but it is usually done upon petition.

It is conceived such an order should be passed, and entered with the register, the proper repository for all these orders; and tho' it is never done, yet a case may fall out, where it may be of fatal consequence to the party; for suppose that one of the errors assigned by the bill of review should be, that by the ancient rules and practice of the court, the decree is to be inrolled by fuch a time, and yet upon the face of the inrollment it appears to be inrolled afterwards without any leave or order of the court for its being fo; (for the day of figning the decree always appears on the face of it) and if it falls out that there is no order entered with the regifter to inroll the decree nunc pro tune, how will fuch an error or mistake be got over, or ever cured? Therefore it were to be wished, that all these orders to fign decrees nunc pro tune, were entered with the register, to obviate a fatal error which one time or other may fall out.

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Much less can an order figned by the Master of the Rolls, to fign and inroll a decree, when the time was elapsed, nunc pro tunc, be thought a sufficient reason for the Lord Chancellor to do it; because it is his hand alone that gives fanction to it: The decree, when inrolled, is a decree of the court, though it is made at the Rolls, it is nothing; and the conclusion is, it is therefore this day (that is to say) such a day and year, adjudged and decreed by the Right Honourable, &c. and by the power and authority of the high and honourable court of Chancery ordered, adjudged and decreed so and so.

And how is it possible for an inferior officer, as the Master of the Rolls is, to direct the superior officer to sign and inroll the decree? or how the great seal can justify the doing of this by any authority but their own, where it is solely lodged, deserves

confideration.

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No original bill can vacate a decree figned and in-

rolled. Gilb. 185.

A decree being pronounced, and defendant dying foon after, the court may be moved to have it infolled nevertheless, for it may be compared to a judgment at law, which if given before, may be entered up after the party's death; and the court has ordered decrees in this manner to be inrolled. 2 Chan. Ca. 227. Nelfon's Rep. in Chan. 169. S. P. 3 Chan. Rep. 73. S. P.

When the party is committed, or brought in by a serjeant at arms, for breach of a decree, he is not to be inlarged until he hath performed the decree in all things that are to be presently done, and also given security by recognizance with sureties, as the court shall order, to perform the other part of the decree (if any be to be performed) at suture days

and times appointed by the decree.

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The decree from the time of pronouncing is binding, and an act of the court; all the rest is a son of ministerial or clerical act.

Decrees of this court are equal judgments at law, and their execution as effectual, or more so.—
And real priority, and not relation to the first day of a term must give preference of payment ——An executrix in her answer confessing just debts do manded by the bill, can't be said to give preference per fraudem, as she only exercises the power lodged in her, and which the courts of law permit her to use.—This court will therefore injoin against judgments subsequent to its decrees. Morris v. The Bank of England, Cases in Eq. temp. Talbot 217, &c. 3 Will. 402. Sel. Cas. in Chanc. 43.

A decree against an executor was preferred to judgment at common law against him, upon in

being prior in time. Prec. in Chan. 79.

An original bill, brought to fet aside a decre for Alimony, confirmed upon appeal in the Houk of Lords, the husband offering to be reconciled; bill retained, but the decree not to be compleath vacated, and the wife at liberty to resort to it is used ill by the husband. Finch 153.

If a fum be liquidated at the filing of the bill, or before, the court will decree interest, where the plaintiff is necessitated to come here. MSS. Ca. in

Chan. Anon. Pafc. 8 Anna.

Decrees or difmissions being signed and inrolled cannot afterwards be varied or altered by the court, (except by bill of review) but you must in that case appeal to the House of Lords for relief, so as to

vary such decree or dismission.

If the decree is for a foreclosure, or for payment of a legacy and interest, or for an account of a trust; or for any other matter where an intricate account is thereby directed to be taken, and by the pleadings and proofs already taken in the cause; you can-

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not make out a regular charge on the defendant, without farther inquiry; then exhibit interrogatories before the Matter for examining the defendant, or any of the parties directed by the decree to be examined, and get their examinations returned as foon as possible, and then make out your charge.

And if there are a great many parties, so that you cannot conveniently serve them in the country, then you may, on affidavit and motion, obtain an order that service of the order nist on the clerk in

court may be good fervice.

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If the decree is personal, as for payment of the money reported due on taking the account, then make out a writ of execution of the decree and Master's report signed and inrolled, and serve it on the party. And in case of non-personmance, then issues

process of contempt.

But if the decree is for a foreclosure, or for any other purpose where it is necessary to sign and inroll the decree, then after the report is consirmed, and the money not paid, you get the decree signed and inrolled; and after that a writ of execution thereof, if it be necessary, and serve the party with a copy thereof, which if he refuses to perform, you make out the usual process against him as in other cases.

When a decree of foreclosure is made, the time for redeeming must be computed according to kalendar months, and not according to lunary ones.

Barnard. Rep. 324.

After a decree against a corporation for a sum of money, and a distringus issued against them, the court resuled to give them any time, or to let them be examined on interrogatories; otherwise if a distringus on mean process. 2 Vern. 395.

Private members made liable where corporation

had no goods. Ibid. 396.

On a bill brought to have the benefit of a former decree, plaintiff cannot examine witnesses for-

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merly examined, or new witnesses, but the court may examine into the justice of the former decree upon the proofs already made in the cause. Ibid.

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Subsequent incumbrances may redeem the first mortgagee the the decree had foreclosed the mortgagor, and an account taken under the decree.—Defendant pleaded the decree figured and inrolled, and the taking the account in an adversary way, and denied that he had any notice of plaintiff's incumbrances: But plea over-ruled. 2 Vern. 663.

On mortgages and fecurities carrying interest, the Master is to compute interest to the time the money is appointed to be paid by his report, after which it will carry interest for the whole sum mentioned in his report, including principal, interest and costs.

And it is the practice of this court, upon an account decreed, that from the time the Master shall make his report, the whole sum therein shall carry interest. And Sir John Trevor, Master of the Rolls, said, If an account is stated by the parties, it shall carry interest from the time of stating. MSS. Ca. in Chan. Trin. 7 Ann.

All parties to the suit or decree shall be bound by the decree, if they are of sull age, compos mentis, &c. And where any come in pendente lite, and while the suit is in prosecution, regularly the decree

bindeth them. 1 Chan. Ca. 150.

After a decree is pronounced, matters of account to perfect it may be examined by a Master, &c. But nothing may come under examination against the foundation of the decree.

If a decree be to account, and the parties die, if the executors or administrators do not revive within fix years, this is not within the statute of limitations. 1 Will. Rep. 742.

If an administrator obtains a decree, that he, his executors, or administrators may redeem a mortgage,

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and he dies intestate before inrollment of the decree, it shall not afterwards be inrolled for the benefit of his administrator, for the first administrator's title is gone. 2 Chan. Ca. 248.

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A decree does not bind the legal interest of the estate, but the person only, who may be ordered to convey and assure the interest; but it so far assects the title to lands and goods, that by sequestration and injunction the court does dispose of the possession to the party to whom of right it belongs.

Where a decree concerns lands even of leafes for years, it must be entered with the register within six months, or else shall not prejudice purchasers.

And he that purchases after a bill exhibited against the vendor, does it at his peril. 2 Chan Ca. 223.

Decree for husband and wife in right of the wife; if the husband dies, his widow, not the executors, shall have the benefit of the decree. 1 Chan. Ca. 27.

If there be an order, that one shall stand committed to the *Fleet* for breach of a decree; yet the warden cannot take, and imprison him, but a writ ought to be awarded for taking him. Danv. 176.

Where the plaintiff had a decree nist, and did not appear, His Honour looked upon it as giving up of the judgment, and dismissed the bill with costs. Sel. Ca. in Chan. 6. 50.

Decrees of this court take effect from the time they are pronounced, and the death of the parties shall not hinder the inrollment in a convenient time. Finch 169.

Lands settled on trustees for raising portions for daughters, on a bill for a sale, the court decreed the heir to join in the sale, tho' he has no legal interest. 2 Vern. 99.

In the drawing a decree, it is not sufficient for the register to recite the bill and answer, and then add, that upon reading the proofs, and hearing what was alledged on either fide, it was decreed so

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and so; but the facts which were proved, and allowed by the court as proved, must be particularly mentioned in the decree; otherwise if a bill of review be brought, those facts shall be taken as not proved; for else a decree could not be reversed by a bill of review. 1 Vern. 214. 2 Chan. Ca. 161. S. P.

Decree will fometimes bind persons not parties or privies, as sour named to defend for a parish, the decree will conclude the inhabitants; so in cases of inclosures of common, suits to settle the customs of a manor, &c. a decree will bind some tenants who are not parties, and others who oppose it; otherwise suits would be endless; if, where there are such numbers, all must be parties, there would be perpetual abatements, and no right could be done. I Chan Ca. 48, 272. 2 Vern. 103, 184. Cases in Eq. Abr. 163.

If there are two executors, and one of them by decree is prohibited to receive any more money, or meddle further with the testator's effects, and a mortgagor to the testator, who was present at the hearing and pronouncing of the decree against him, he must

pay it over again. 1 Vern. 57, 122.

Though it be a rule not to found a decree upon a fingle evidence against a defendant's answer, yet it has been over ruled, where a fraud was plain and considerable. Asl. 69.

Decree to account to the first administrator, the

fecond may carry it on. Vern. 25.

Equity will not decree an award, unless it be of all matters referred. 1 Chan. Ca. 186.

A decree, whether inrolled or not inrolled, is

pleadable. 1 Vern. 310.

Matters affigned for error in a decree must appear in the decree itself; for being inrolled, it is such a record as must be tried by itself. 1 Chan. Ca. 54.

If a feme fole exhibits her bill, and during the proceedings marries, and no notice is taken of it, but

but the cause proceeds, and there is a decree for the defendant; this will not be a sufficient cause to reverse the decree, because no error appears in the decree, only a matter which should have been pleaded in abatement, and of which the defendant alone might have taken advantage. I Chan. Ca. 231.

The Lord Chancellor for the time being will inforce the execution of decrees, though made by a prior Lord Chancellor; and though they are alledged to be unreasonable, yet will assist with the utmost process of the court till they come regularly before him to be reversed. 2 Chan. Rep. 127.

These are made by the clerk in court in the cause, and ingrossed on parchment, stamped with double five shillings, each skin to contain ten sheets.

[For more concerning decrees, vide 2 Vol. Abr. Eq. 279, 280, 281.]

The firm observed in drawing a decree.

Lord Chancellor.

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Friday the 9th day of March 1767, and in the 7th year of the reign of his Majesty King George the third. Between A. B. plaintist, C. D. defendant.

HIS cause coming yesterday, as also on this present day, to be heard and debated before the Right Honourable the Lord High Chancellor of Great-Britain, in the presence of counsel learned on both sides, the substance of the plaintiffs bill appeared to be [Here recite the bill briefly.] Therefore that the said defendant may account, &c. [The prayer of the bill.] and to be relieved is the scope of the plaintiff's bill: Whereto the counsel for the defendant alledged,

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That he by his answer admits, &c. [Here fet + Here fol- forth the substance of the answer. 1 + Whereupon. low the s and upon debate of the matter, and hearing the words of the order, will of the faid E. F. the answer of the defendant beginning at a paper-writing or account of the testator's hand. Whereupon ; 6 for where writing relating to his estate, marked No (1.) and the depositithe proofs taken in this cause read, and what was ons are read 6 at the hearalledged by the counsel on both sides, his Lording, it is al-' ship declared, That, &c.' [Here fet forth the deways faid upon readcree of the court.] ing the proofs, and also such exhibits or deeds, if any read at the hearing.

> But observe, that if a cause be heard upon bill and answer only, and the decree be thereupon made; then you fay after the words coming on to be heard and debated before, &c. you fay, ' upon the bill and answer in the presence of, &c. Whereupon, and upon debate of the matter, &c. [as in the order,] this court doth think fit, and so order and de-' cree; and accordingly it is ordered, adjudged and decreed, that, &c.' [Here insert the decretal part of the order on hearing.]

> And if it be a rebearing, upon the order on hearing, then after reciting the order on hearing, fay thus; -- with which faid order the faid defen-' dant being diffatisfied, he petitioned his Lordship for a rehearing of the faid cause, and to have the

> order rectified in several particulars; and thereupon, by an order bearing date, &c. it was ordered,

> ' that the faid cause should be reheard the, &c. of, · &c. upon the defendant's depositing ten pounds

> with the register, [as you find by the words of such order.] And the faid defendant having deposited

> the faid ten pounds accordingly, and the faid cause coming on to be reheard, in the presence of

> counsel, &c. the counsel for the defendant insist-

ed, that, &c. setting forth the substance of the defendant's fendant's argument, as recited in the order of rehearing,] whereto the counsel for the plaintiff insisted
that, &c. [Reciting what the plaintiff's counsel infifted upon, as mentioned in the said order of rehearing.] Whereupon this court did declare and decree, &c. [according as it is expressed in such order
of rehearing.] And if upon the rehearing, the former order be confirmed, say, — 'Whereupon,
and upon debate of the matter, and hearing what
could be alledged by counsel on both sides, this
court declared, that the decree formerly pronounced in this cause was just, and did accordingly order that the same should stand, &c.' [as it is in
the order.]

The words, All just allowances, in a decree, do not impower the Master to allow for improvements, but the decree must particularly mention them, which it never does, unless the party lay before the court, some proof there have been any. Moseley,

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In drawing up all difmissions made upon the hearing of a cause, you use the same words of course as you do in drawing up the decrees.

But towards the bottom or end of every decree or dismission you draw up, in the last sheet upon the

left hand you write these words, viz.

It agrees with the records, orders and report, and is examined by

A. B. for the plaintiff.

Which A. B. is the plaintiff's Six clerk, if drawn up for the plaintiff; but if drawn up for the defendant, then the defendant's Six clerk is to fign it: But if there be only one order, you say only order; and if no report in the cause, you leave the same out.

After so signed, the bag-bearer carries the same to the secretary of the decrees, and if no caveat is

entered

entered by the defendant with him against figning the decree, or dismission, the same is signed by the Lord Chancellor, and also by the Master of the Rolls, if he made the decree; otherwise there is no occasion for his Honour's signing it.

Of inrolling decrees.

S foon as the decree is figned by the Master of the Rolls, (which he always does, if he pronounced the decree) and also by the Lord Chancellor. (which must be done in all cases) you carry the decree to the clerk of the chapel of the Rolls, who according to the length of the decree, gives you as many parchment rolls as will inrol the decree; the clerk of the Rolls usually writing upon the last sheet of the decree, which is called the docquet, the day and year, and his name thereto, as a memorandum that he has delivered such rolls; on which rolls the plaintiff's clerk in court, or his clerk or agent, ingroffes the decree in a strong secretary hand, (which before the late act of Parliament were always inrolled in a good chancery hand) which must be word for word as in the docquet or decree; but there is no occasion to insert in the involument the Master of the Rolls or the Lord Chancellor's names, but only to conclude with the end of the decree; and when the inrollment is carefully examined with the docquet of the decree, the plaintiff's clerk in court may carry both over to the cleik of the Rolls chapel, who will receive them, and give you a receipt for them, if you defire it: in whose custody both the docquet and inrollment are to remain for any one at any time to inspect and take a copy thereof, if he requires it, upon paying the clerk of the chapel for the fearch thereof, and also for such copy.

Decree before inrollment thereof, ought to be delivered to the adverse party, or his attorney, who is in fel

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in eight days to return the fame figned by the counfel of that fide, or to make his objections to the draught. Vin. Abr. tit. Decree (D) Ca. 17 .-2 if this is now the practice.

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Of the execution of decrees, &c.

N order to inforce obedience to a decree, you are first to get it signed and inrolled as aforesaid, and then to ferve the party, by shewing the writ of execution of the decree itself under seal of the court, and delivering a true copy thereof; and if he pays not obedience thereto, on affidavit of the fervice thereof being filed, you may proceed to take out all the processes of contempt, as attachment, proclamation, commission of rebellion, &c. against him. when the party is taken upon any of the faid proceffes, he is, in strictness, to be straitly committed to prison, and not to be at liberty till he hath performed fuch part of the decree as is presently to be done, and given fecurity by recognizance with fureties, if the court shall so order, to perform the other part of the decree (if any be to be performed) at future days and times appointed.

And if the decree is for land, and the party continues obstinate after his imprisonment, the court usually grants an injunction for the possession thereof to be yielded up to him for whom the decree was; and if this be disobeyed, after it is served, upon affidavit thereof, the court will grant a commission to the sheriff of the county where the lands lie, to put the party in possession: And if need be, a writ of assistance may be had, which is directed to the sheriff, commanding him to be aiding and affifting in putting the

party in possession. Vide 3 Will. Rep. 379.

A sequestration may be granted in Scaccario, as it has always been practifed in Chancery, where a de-

of the court of equity would be to little purpose if it had not sufficient authority to see its decrees execut-

ed. 2 Freem. Rep. 99.

If the decree is for payment of money, the writ of execution thereof, under feal, must be served, and the money demanded, by the plaintiff himself; or any one else may serve the copy of such writ on the party, only the plaintiff must be present to demand the money of the party: Or if the plaintiff is not, or cannot be conveniently present, he that serves the writ of execution of the decree, must have a letter of attorney from the plaintiff to demand and receive it.

And observe, that where a person stands out all process of contempt to sequestration, such sequestration is always granted to four or more commissioners to sequester and take into possession the real and personal estate of such person, and to receive the rents, issues and profits thereof, until he has fully personned the decree or order of the court for which such sequestration issued, cleared his contempts, and the

court shall take other order to the contrary.

If by the decree the defendant is to produce deeds and writings, or to attend and be examined upon interrogatories, the ancient rule used to be, to serve him with a copy of a writ of execution of the decree, and shew it him under seal, and at the same time to serve him with a warrant from the Master, to give him a reasonable time to produce them: As where a man lived in Northumberland, he must have a longer time than if he lived near the town; and by the ancient rule no writ of execution was ever allowed to be made out till after the decree was signed and inrolled.

As this rule was anciently purfued, so it appears to be well grounded; because the party had fair notice to produce them, and an opportunity of shew-

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ng to the court his reason for not doing thereof; whereas now nothing is more common than to take out two warrants from the Master, which are served on the adverse party's clerk; and on his not producing the deeds, and the Master certifying the default, a motion is presently made to produce them in four days, or stand committed; and this order is erved on the party's clerk: And how it is possible for a man to produce them in four days, for a man that lives above a hundred miles off, is not easily to be accounted for.

It is therefore contrived, that upon all these moions for a man to stand committed in four days for not attending to be examined, or for not producing deeds according to the decree, the question (tho' this eems to be of course) ought to be asked, whether he party has been ferved with a writ of execution of he decree, and with the Master's summons served on the party personally; if he has, then on a certifieate from the Master of their not being produced, or of his failure to attend and be examined, he is left nexcufable; and in that case, he ought to stand committed, and as all commitments are grounded pon fome offence or other, so it has been also taken, hat the offence committed is not paying duty to the great feal; and the party, in this case, may proceed, if he pleases, by way of attachment.

But why a man's liberty should be taken away, because a Master upon a second summons certifies his default, is not easily to be accounted for; notwithstanding, this is a practice now used, and it is a very old, but a true saying, that no offence can be committed but where the great seal is shewed the party. Indeed this is not so in extrajudicial matters; is in the case of bankrupts or ideots, because there they are never put under seal; and the offence in that case is for not yielding obedience to the order

figned

figned by the Lord Chancellor or Lord Keeper, to be shewn to the party against whom it is made.

The words of course of a writ of execution of a order.

To A. B. and to all and every other person and persons to whom the tenor of these presents doth in any wise relate or concern, greeting: Whereas a order hath been lately made in our court of Chancen in the words following:

The words after.

N. B. The words dotted under may be left out if the order be such as the defendant only is we perform.

If of a decree.

To A. B. greeting: Whereas a certain final judgment or decree hath been lately made in our court of Chancery in the words following:

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The words after.

Therefore we strictly injoin and command you the said A. B. effectually to perform, sulfil and execute all and every the matters and things specified and contained in the said final judgment or decree, so far as the same any way relates to or concerns you, according to the tenor and true meaning of these presents; And hereof fail not at your peril. Witness, &c.

Before the report.

And whereas the faid Master, in pursuance of the said order, made this report in the words following:

Short writ of execution of a decree.

GEORGE the third, by the grace of God, of Great Britain, France and Ireland king, defender of the faith, and so forth, To A. B. greeting: ---- Whereas by a certain final judgment or decree lately made before us in our court of Chancery, in a certain cause there depending, wherein C. D. is complainant, and you the said A. B. defendant, It is ordered and decreed, that you the said defendant do pay to the said complainant the sum of - as by the said decree duly inrolled, and remaining as of record in our said court of Chancery, doth and may more fully appear: Therefore we strittly injoin and command you the said A. B. that you do immediately pay or cause to be paid unto the said complainant the said sum of --according to the tenor and true meaning of the said decree; And bereof you are not by any means to fail at your peril. Witness ourself at Westminster, the - day of - in the - year of our reign.

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Of exemplifying decrees, &c.

A natter recorded or inrolled; as decrees, letters patent, depositions, &c. and is made out from the inrollment thereof, and sealed with the Great Seal: And such exemplifications are as effectual to be pleaded, or produced in evidence, as the decrees, &c. themselves are.

And bills, answers, depositions, &c. matters of record, are exemplified, as well as decrees. But observe, that nothing but matter of record ought to be exemplified. 3 Inst. 137. li. 5. 53.——And therefore all decrees, deeds, &c. must be inrolled before they are exemplified.

An exemplification of a deed may be ordered to be pleaded at law, where the deed inrolled cannot be

produced. Tot. 89.

Proofs cannot be exemplified without bill and answer; and therefore if a bill be dismissed for irregularity, or impropriety of jurisdiction, &c. as not proper for this court, or where it was by way of revivor, when it should be by original bill, so that there never was any such cause in court, the depositions in such cases cannot be exemplified, seeing the bill could not. Vide 1 Chan. Ca. 175.

Exemplifications of decrees are docquetted thus, viz.

In Chancery, 15 April 1767. An exemplification of the invollment of a decree in this bonourable court, in a cause wherein A. B. is plaintiff, and C. D. and others are defendants; exemplified at the request of, &c.

Examined { R. H. } Masters in Chancery.

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And certified thus, viz.

We the Masters in Chancery, whose names are bereunto subscribed, have carefully examined the exemplification mentioned in the docquet on the other side, with the inrollment thereof; and do certify the same to be a true exemplification of the said inrollment:

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And indorfed thus, viz.

An exemplification of a decree in Chancery, in a cause there, wherein, &c. exemplified at the request of, &c.

And in the like form, an exemplification may be of the bill, dedimus, answer, replication, commission, to examine, interrogatories, and depositions, &c. as follows, viz.

GEORGE, &c. To all persons to whom these Bill. presents shall come, greeting: We have inspected a certain bill of complaint exhibited before us in our court of Chancery, remaining filed and as of record in the said court, in the words following.

We have also inspected our commission with the in-Dedidorsement thereon, directed to certain commissioners to mus. take the answer of the aforesaid C.D. and E.F. to the said bill, likewise remaining filed in our said court, in the words following.

We have also inspected the answer of the aforesaid Answer. defendants, taken by virtue of the aforesaid commission, and returned into our said court with our said commission, remaining filed in our said court, in the words following.

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Repli- We have moreover inspected the replication of the cation. asoresaid A. B. to the answer of the asoresaid C. D. and E. F. remaining filed as of record in our said court, in the words following.

Com- We have likewise inspected our writ directed to certain mission. commissioners' to examine witnesses with the schedule of oaths thereto annexed, between the aforesaid parties, with the indersement thereon made, remaining as of record in our said court, in the words following.

Interro- We have likewise inspetted certain interrogatories on gatories the fart of the said A. B. complainant against the aforesaid C. D. and E. F. defendants, exhibited before the said commissioners, remaining as of record in our said court, in the words following.

Depositions. And lastly, we have inspected the depositions of certions.

tain witnesses taken and examined before the said commissioners on the behalf of the said A. B. complainant, against the aforesaid C. D. and E. F. defendants, by virtue of our aforesaid commission, and returned into our said court with the commission and interrogatorial aforesaid, and there remaining as of record in our said court, in the words following.

from Which faid bill, and the commission to take the said from answers and indorsement thereon, and also the said answers, replication, commission to examine witnesses, and indorsement thereon, with the schedule of oaths therew annexed, interrogatories and depositions of witnesses, we have at the request of the said A. B. exemplified by these presents, and in testimony thereof have caused these our letters to be made patent. Witness ourself at Westminster, &c.

Decree. GEORGE the third, &c. We have inspetted the invollment of a certain final judgment or decree lately

lately made before us in our court of Chancery, and remaining as of record on the rolls of the said court, in the words following.

We therefore at the request of the said complainant Conclubave exemplified the said final judgment or decree by sion. these presents, and in testimony thereof have caused these our letters to be made patent. Witness, &c.

Of reviving decrees, &c.

BILLS of revivor of decrees, and other proceedings are necessary where a suit happens to be discontinued, which is generally by reason of the death either of the plaintiff or defendant, before the decree inrolled.

Where a decree is inrolled, and a party dies, or a female plaintiff marries, decree and proceedings must be revived by a subpana scire facias, though in case of a decree inrolled a revivor by bill hath been allowed. I Chan. Ca. 37.

But where a decree is not figned and inrolled,

a bill of revivor must be brought.

And it is said, where one can revive by a fubpana sci fa', it is in their election to do it either by that process, or by bill of revivor: But where after the decree there have been other proceedings, which cannot be revived by the said subpana, this sure must be done by bill. Vide 2 Chan. Rep. 67.

If the parties that would revive the decree inrolled, be in privity of blood to the first parties, viz. as heirs; or in privity of contract, as executors or administrators, they may revive it by subpana sci'

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Where the decree was obtained against the ancestor, and his heir does not claim under that title, but by virtue of another title paramount; as where an estate is decreed against a man, and his heir insists

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his father had not title thereto, or was only tenant for life thereof, the decree can never be carried into execution against him; he is at liberty to controvert the justice and validity of the decree, and may make a new defence from what his ancestor did, and vary his case as he shall be advised, and the parties go into new examination of the matter, and hear the cause de novo; and the court judges whether the decree is right or not, and may affirm or reverse it at their pleasure.

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But where one man obtains a decree against another, for a real estate, and the party dies before the plaintiff is put in possession; in that case, if the heir at law claims the estate by descent under his ancestor, or as devisee under him, he shall never controver the justness of the decree, though his ancestor should have mistaken his desence; nor shall he be at liberty to make a new desence, or enter into new proof, so as to overthrow the former decree; especially when it appears to the court that the decree has been of an ancient standing.

If an administrator obtains a decree, but dies before inrollment, the administrator de bonis non may revive this decree within the equity of the stat. 30 Car. 2. c. 6. Owen and Curson, 2 Vern. 237.

This fubpana is obtained either on motion or petition, and must be served two days at least before the return; in all other respects the service is like that of a subpana to answer. And on the return of the subpana, if no cause be shewn to the contrary, the decree will, upon affidavit of service, and a motion to that purpose, be ordered to stand revived.

But if there be neither privity in blood, nor privity in contract, the decree or cause must be revived by an original bill, and not by sci fa', or bill of revivor. And therefore an assignee, or a devisee, cannot have a bill of revivor, being in nature of purchasers only. Vide 1 Chan. Cases 122, 174.

On an original bill in nature of a bill of revivor of a decree, a devisee shall have the same advantage of the decree as an heir or executor. 1 Vern. 548.

Also a bill of revivor lies not upon a decree of a long standing; but in such cases an original bill is to be exhibited, and the decree to be set forth as

evidence. I Chan. Cases 216.

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A decree was figned and inrolled, omitting part of the matter decreed, and the defendant being dead, (so that there was no helping it by motion) a bill of revivor was brought to revive (as was alledged) the part of the decree omitted, though in truth it extended to the whole decree. To this the defendant pleads, that the decree being inrolled, a bill lay not, but a fubpana sci fa'. But the plea and demurrer were over-ruled; and it was held that a sci fa' would only have revived the decree, and the proceedings before it, but not those afterwards. I Chan. Cases 37.

A bill of revivor was brought where there had been some proceedings touching costs after the de-

cree, and adjudged good. 2 Chan. Rep. 67.

No bill of revivor can be brought, where it relates to costs only, (unless the costs are taxed, and a report made in the life-time of the party) for this is a personal action, and actio personalis moritur cum persona. But if by the decree the party is to pay a sum of money, or if a duty is decreed, or if he is to deliver over a bond or deed or writing, or if any thing is annexed to the decree besides costs, the suit may be revived.

And yet a bill of revivor lies not to revive a decree made for costs only. Ibid. 195 and 246. and

2 Chan. Cases 7.

And it is faid, no defendant or any other who represents him, can or ought to revive in case of an abatement happening before the decree be signed and inrolled. 2 Chan. Rep. 195.

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Of reviewing and reverfing decrees.

HEN a decree comes to be reversed on a bill of review, it ought to be either because it was unjust in matter of law arising within the body of the decree, or proceedings in the cause, or for that the court wanted, or exceeded its jurisdiction.

As in the case of bills of revivor, so also in bills of review, none but such as are parties, or privies, can commonly bring them; but in some cases, where a man's interest is affected, or he is grieved by a decree, he may have this bill; as where a parish was sued, and sour of the parishioners named only to defend, another parishioner may bring this bill. I

Chan. Cafes 272.

As the end of a bill of review is to reverse a decree formerly made; in order to proceed therein, first a copy of the decree, after it is signed and inrolled, is to be procured, and then reciting the former proceedings, as they are recited in the decree, you are to fet forth the party's case, and affign the reasons why the decree should not be binding, but reversed as for error in law, &c. And this bill cannot regularly be brought upon any matters in fact, or matters of record than the decree itself; yet if there be oath made of the discovery of new matters, which could not possibly be had or used at the time when the decree passed, a bill of review may be exhibited by leave of the court, but not other-Vide Toth. 42. Gilb. 184. And by a late order made the 7th of October 1741, no supplemental or new bill, in nature of a bill of review grounded upon any new matter discovered or pretended to be discovered since the pronouncing of any decree of this this court, in order to the reversing or varying of such decree, shall be exhibited without special leave of the court sirst obtained for that purpose; and unless the party exhibiting the same do first deposit with the register of this court so much money, as together with the deposit, by the rules of this court to be made on obtaining a rehearing of the cause or causes wherein such decree was pronounced, will make up the sum of sifty pounds, as a pledge to answer such costs and damages as shall be awarded to the adverse party, in case the court shall think sit to award any at the hearing of the cause on such supplemental or new bill.

No witnesses which were or might have been examined on the former bill, shall be examined on a bill of review. Nor shall any new evidence, or matter then in the knowlege of the party, and which might have been used before, be a sufficient ground for a bill of review. 3 Chan. Rep. 76. 1 Chan.

Ca. 43. S. P. 2 Chan. Rep. 45. S. P.

The matters affigned for error must appear in the decree itself. And no errors can be affigned on a bill of review, but errors in law; which must appear from the facts stated in the decree; and if new matter be discovered afterwards, it can only be assigned for error with the leave of the court. I Vern. 166, 292.

If a decree be against a statute, it may be reviewed and reversed: So if the *Chancellor* errs in a decree in a matter of law, and it appears within the decree, this decree may be reviewed for this error. I

Roll. Abr. 332.

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But if the Chancel'or errs in his decree upon a matter of fact, this decree is final, and cannot be reviewed, because the parties cannot go to a new examination of witnesses now; for after publication this may not be done. I Roll. Abr. 382. And where the decree is final, and cannot be reviewed,

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it is also observed, that it cannot be altered by original bill, unless for matter subsequent. And yet if the Chancellor errs in his conscience, upon a matter of fact proved before him, there may be review of this matter; because there needs no new examination, but this may be reviewed upon the old depositions, which is usual. 1 Roll. Abr. 382. Vide

Chan. Ca. 45.

It has been infifted on as a rule, That nothing shall be a ground to direct a new trial to avoid a judgment at law, that would not be a ground for a bill of review to reverse a decree; and that a confession subsequent to the decree is no ground for a bill of review; nor is the want of any evidence or matter which might have been used in the first cause, and of which the party had then knowledge. 3 Chan. Rep. 76. I Chan. Ca. 43. S. P. 2 Chan. Rep. 45. An account was decreed, pending which the fuit abated; and yet the account was carried on, finished and confirmed by decree, and held to be no error, or cause of reversal on a bill of review brought. 1 Chan. Ca. 44, 45, 122. But quære if this account could be carried on, as the fuit abated, without bringing a bill of revivor, and an order obtained for reviving the former proceedings.

If a decree, or any part of it, be in the nature of things impossible, or if it be repugnant, and one part contradictory to the other, it is erroneous, and may be reversed on a bill of review. 1 Chan. Ca. 86. But though there be apparent error in the decree, if the party has rested under it sixteen or twenty years, the court in some cases will not reverse it upon a bill of review. 1 Chan. Rep. 140. Also the court will not reverse a decree for want of form, or mistaking in an account; for that may be helped by a Master, without reviewing: No bill of review, or other new bill, shall be admitted to change or alter a matter already decreed, till the party hath

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obeyed the decree in all things, which stand upon the strength of the decree only; wherein the court can set him in as good a state again as he was, in ease the former decree should happen to be reversed: And where the decree is to yield up the possession of lands, deliver writings, or pay money, &c. he must first perform these things before he is admitted to a bill of review; except the court see cause to dispense with the manner of the performance, viz. if money is decreed, the court will sometimes accept of good security. Toth. 42. I Chan. Ca. 42, 86. Vide I Chan. Rep. 139. 2 Chan. Rep. 48.

But if the decree requires an act to be done, which would extinguish the party's right at common law; such as conveying lands, releasing a debt, acknowledging satisfaction, cancelling evidences, &c. these parts of execution of the decree will be spared, and of course be stayed by order of court, until the bill of review be determined; though the plaintiss in review must move for an order to stay the execution of the decree in these or the like particulars, or what else is proper to be stayed, if he expect to have it

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A decree (and much more an interlocutory order) gained by fraud may be fet aside on a petition, (as well as a judgment at law by motion) — a fortiori may such decree be set aside by bill. 3 Will. Rep.

111. By Lord Chancellor arguendo.

On a bill of review the cause for review must arise and appear upon the case as it is stated in the decree, and the facts must be admitted as they are

stated. Vide I Chan. Ca. 54, 55.

The plaintiff, who had a decree, brought a bill of review, and thereby complained, that he had not enough decreed him; and a demurrer being made thereto, for that if a bill of review lies, it is only for him against whom the decree is; after a long debate, the demurrer was allowed, and the bill

bill of review dismissed. And where a former bill of review had been dismissed, the party brought another suggesting farther errors, &c. But this was dismissed also on the maxim, Interest reipublica us sit sinis litium.

If a man brings a bill of review, to which there is a demurrer, which is allowed, he cannot after wards bring a new bill of review. I Vern. 44.

1 Vern. 417. S. P.

A bill of review lies not after a bill of review,

1 Vern. 135. 2 Chan. Ca. 133.

Where a demurrer to a bill of review is allowed, it may be inrolled; but if over-ruled, it cannot, h as to prevent the demurrer's being re-argued. 1 Vern. 120.

Sometimes bills in nature of bills of review at brought in this court against decrees and other proceedings in *Ireland*, and limited jurisdictions in *England*: And decrees of inferior courts may by bill here be examined, and affirmed or reversed, as the court sees cause.

But such bills are more properly bills of reversal, and not bills of review. And decrees made in Inland may be appealed from to the House of Lords here, and either confirmed or reversed by that House; so likewise may decrees made by the count of Exchequer here, and also decrees of other inferior courts.

Where error appears in the body of the decree drawn up and inrolled, the court will open the decree. Prec. in Chan. 260, 261.

The same decree gives liberty to try the title at law, and yet awards injunctions to put plaintiff into possession, and quiet him in his possession; reversed as repugnant. Vide 2 Vol. Abr. Eq. 281. (C) Ca. 2.

Note, That besides this manner of reversing decrees, they may also be reversed by appeals in Parliament.

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CHAP. VI.

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Of Appeals in Parliament. (a)

of Lords, HERE are two ways for reverling decrees from a fenof this court; the one by bills of review in the tence by fame court, already treated of; the other by appeals from a de-And though when the decree is to cree on the in Parliament. be reversed by a bill of review, the matter affigned charitable for error must appear in the decree itself; yet when uses. Vern. you proceed by appeal in Parliament, any matter flanding ormay be affigned therein, although not appearing in der of the House of Lords, made

If either party thinks himself aggrieved by a de-March 24, cree, he may by petition appeal to the Lords in Par-peals are to liament, and have the case reheard there, and they within five will affirm, alter, or reverse the decree, as they see years after fit.

or order in But observe, that an appeal cannot regularly be the court made to the House of Lords, till after a re-hearing figned and before the Chancellor, if the cause was heard by the inrolled. Master of the Rolls: Though if a decree be made by 10. Mole. the Master of the Rolls, and the same is signed and ley 30. inrolled, yet there can be no rehearing thereof before the Chancellor; but such decree must be appealed from to the House of Lords.

On an appeal from a decree; new matters may be read, not formerly in proof. Gilb. 151. Sed vide Prec. in Chan. 295.

An appeal against inrolling a decree, is only to give the court an opportunity of hearing what could be said against it. Gilb. 151.

Ergo on such an appeal the cause is intirely open, and the party at liberty to offer what he can. Gib.

Appeals are to be figned by two noted counfel, and exhibited by way of petition, and lodged with the the clerk of the House of Lords, with whom the appellant is to deposit twenty pounds to recompense the other party his costs, in case he fails in his ap-

peal, &c.

The appeal being thus lodged, and read in the House, the respondent is ordered to have a copy of the appeal, and required to put in his answer thereto on a day fixed; and a day is appointed for hearing the cause, in order as the appeals come in, and notice is given thereof to the appellant's solicitor, who may get a summons served on the other side to appear, &c.

These appeals can only be argued by two counsel on each side: And after hearing counsel on the appeal, and upon the answer on due consideration thereof, the Lords order and adjudge that the decree of the Chancery be varied in such matters as their Lordships think sit, or that the petition and appeal be dismissed, and the decree affirmed with costs, &c. A majority of the Lords finally determines the cause.

Sometimes the House of Lords direct an issue at law for trial of some point necessary between the parties; and after such trial to resort back to the court of *Chancery*, for their farther directions in that matter.

And printed copies of the appellant's and also the respondent's case are usually delivered to the Lords for their better information of the matter in controversy; which cases, before printed, are always signed by two counsel, viz. the plaintiff's case by two of his counsel, and the defendant's case by two of his counsel; whose respective names are printed at the bottom of the cases.

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ful pe A petition and appeal to the House of Lords.

Between A. B. plaintiff, C. D. defendant.

To the Right Honourable the Lords spiritual and temporal in Parliament assembled.

The humble petition and appeal of the plaintiff A. B.

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That your petitioner sometime in or about term, exhibited his bill in the high Court of Chancery against the said C. D. to be relieved, &c. [Set forth the prayer of the bill.] To which bill the said C. D. appeared and answered, and thereby insisted that, &c. [Set forth such parts of the answer which he insisted upon against the plaintiff's bill.]

That your petitioner is advised the said decree (and subsequent orders) are erroneous, and humbly appeals therefrom to your Lordships.

Your petitioner therefore humbly prays your Lordships to grant to your petitioner your Lordships order of summons to the said C. D. to put in his answer to this your petitioner's appeal at such time as your Lordships shall prefix, in order that your Lordships may hear the said cause, and that your Lordships will be pleased to reverse the said decree (and subsequent orders) in the said cause, or grant to your petitioner such relies in the premisses as to your Lordships in your great wisdom shall seem meet.

And your petitioner shall ever pray, &c.

A. B. (the appellant.)

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G. H. counsel.

The respondent's answer.

The answer of C. D. to the petition and appeal of A. B.

HIS respondent not confessing or acknowledging all or any of the matters or things to be true, as in and by the said petition and appeal are mentioned and set forth, for answer thereunto, saith, That he believes it to be true that such decree (and subsequent orders) as are complained of, were made by the court of Chancery as in the said petition and appeal are mentioned and set forth: But as to the dates, substance and contents thereof, this respondent humbly craves leave to refer thereunto when the same shall be produced; and this respondent humbly conceives and is advised that the said decree (and subsequent orders) are agreeable to equity and justice, and therefore humbly hopes that the same shall

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be affirmed, and that the faid petition and appeal shall be dismissed this most honourable House with costs.

L. M. (counsel.)

CHAP. VII.

Of costs in general (a).

HEREVER the court decrees the party bill filed by to pay costs personally, in that case the amy. Str. Master taxes them, and you proceed by subpana and 708. Sel. Cas. in attachment for recovery thereof: But where the chanc. 49. court directs that they shall be paid out of a real or 2 Will.2970 trust estate, and not by the person of the party, if abr. 238. the estate is fold, the costs are usually paid out of pl. 18. the purchase money, or out of the profits in the receiver's hands; or if the party who is to pay them, has sufficient profits in his hands, the court will direct him to pay them thereout, or send him to an inquiry before a Master, whether there is sufficient for the purpose, or not.

It is said in the court of exchequer, if a man brings a bill for 5000 l. and recovers only 5 l. the defendant shall pay him his costs throughout; but not so in Chancery, for the party shall have costs only so far as he prevails in his suit; and it shall be referred to a master to distinguish the same: And this rule is sounded upon good reason; for if a plaintiff sets up four demands, and prevails only in one, it is unreasonable he should have costs throughout; therefore he must pay costs where he does not prevail, or at least lose all the rest of his costs, if he does not pay them to the other party; and in this case the master must look over all the proceedings which relate to the matter prevailed in, and no farther.

Vol. II. K There

There was an order made in Lord Keeper Wright's time, that no exception should be allowed to a report of taxing costs, and has been since pursued with this difference, that where the Master allows such costs as ought not to be allowed by law, in such cases, though it very seldom or never falls out, the court will indulge the party to except touching this point.

The court never refuses upon a clerk or folicitor's petition to have his bill taxed; and it was settled on debate, that the court cannot order the client to pay what is taxed, because it may be recovered by law.

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But it is otherwise on client's petition to submit to payment of what is due; in that case the clerk or solicitor, where the bill is taxed, may take out a subpana for the costs, and proceed by attachment, as in other cases; and this becomes a personal de-

mand upon his client.

As to scandals, there are many cases where though the words in the record are very scandalous and highly reflecting on the party, yet the court does not think them so; especially where they are material, and tend to a discovery of the very matter in question; for a man may be guilty of a very notorious scandal, or of a scandalous action, as in case of a brokage bond given before marriage to draw in a woman to marry, where a man is represented to have a great estate, and such like: And the court judges whether the matter may primâ facie be scandalous; yet if it is of absolute necessity so to be, the court never looks upon it to be scandalous.

But where the scandal is altogether malicious and foreign to the point in question, in all these cases, if the Master reports it scandalous, there the court will order the Master to expunge it with costs paid and received. The Master generally gives full costs, and at the end of the bill 201. &c. which the party may be supposed to have suffered in his reputation

by the scandal; and it is discretionary in the Master to allow what he pleases.

As to what concerns scandals or impertinencies in any bills, answers or records of the court, they are always referred to a master, and the costs paid on

which foever file the report falls.

Impertinencies are, where the records of the court are stuffed with long recitals, digressions of matter of fact, unnecessary and immaterial to the point in question; as where a bill of review is brought, and the party fets forth in bec verba not only the other bill and answer, but the whole proceeding in the case; which being all matters of record, and fair copies of which the party has once paid for, he ought not to pay for them over again: There is no occafion to fet them forth in bac verba, or make an unnecessary repetition, for they ought to be concise and short; for where a bill of revivor is grounded on another bill and proceedings, they go no farther than faying, that fuch a one in or about fuch a term exhibited his other bill into this honourable court, to be relieved touching certain matters and things therein contained, as by the fame bill duly filed and remaining, &c. that witnesses being examined, publication passed, and the cause being at issue came on to be heard fuch a day, when it was ordered fo and lo; and there take in the ordering part of the decree very fhortly, and no more than what is material to the revivor, and the register's recitals are wholly omitted; for when a decree is inrolled, it is never done from the register's recitals, which are very often mistaken.

If any dispute arises, the bill and answer must be read:

This short method of drawing a bill of revivor must be observed by the draughts-man, viz. that the former proceedings be recited in the shortest manner possible, since they can be of no use to his

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client; for from the records alone the fact must be determined; if otherwise set forth they are impertinent, and will be expunged with costs. All the de. fendant has to do, is by answer to set forth, he believes there was fuch a fuit, decree and proceedings, and refers to records; and as it is hard for the fuitor to pay costs for this impertinence, who is ignorant of the matter, and it is the fault of the counsel, to it sometimes falls out, that the court will pass a cenfure on fuch counsel who figned the pleadings; and precedents may be found, where the court has ordered counsel to pay costs out of his own pocket; which would prevent counsel from stuffing the bills with tautology or impertinency: And the same rule ought to be held in exceptions to a report; for some counsel will fign the exceptions, and perhaps most of them are frivolous and vexatious, and they ought for the ease of the court to be discouraged wherever met with; and the court is of necessity to take notice of the counsel who figned the same.

Bill brought against a corporation to discover writings. — The defendants answer under their common seal, and so, not being sworn, will answer nothing in their own prejudice. — Ordered that the clerk of the corporation, and such principal members as plaintist thinks sit, answer on oath; and that the Master settle the oath. 1 Vern. 117.

If the party intitled to have costs dies before they are taxed, they are gone. Sel. Ca. in Chan. 21.

Several persons inclosed lands under a custom, another brings eight actions against them.—A bill is brought to stay proceedings at law, and to establish the custom. On issue directed a verdict is found in favour of the Custom. — Desendant shall pay costs at law and equity. Barnard. 436.

Executor bringing a frivolous bill, ordered to pay costs out of the assets,—if assets denied, to be examined on interrogatories. Sel. Ca. in Chan. 62.

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Feme fole brings a bill, then marries.—Baron and Feme bring a bill of revivor, and have a decree with costs, they shall have costs for the whole suit, except the bill of revivor. 1 Vern. 318.

One protected by the Genoese ambassador brought a bill in Chancery, and was ordered though after (a) (a) But it

has been de-

Exchequer. Bunb. Rep. 183. pl. 258. and so it has in that court even before answer, where the bill was for an injunction to stay the defendant's proceedings at law in ejectment, because the plaintiff was in a manner forced into this court (viz. Exchequer) and did not come in originally. Bunb. Rep. 272. pl. 349. If the motion be before answer the defendant will not be obliged to put one in until Plaintiff give bond with a surery to the ferior six cierk, not towards the cause, in 401. penalty for answering costs, 3 Will. 452. pl. 142. Moseley 7. 175. pl. 89.

answer put in, to give (b) security to answer the (b) A depocosts in the same manner as if he were a foreigner, will not be
because by Stat. 7. An. c. 12. All process against permitted,
ambassadors and their servants are made void, so thereof.
that if the bill should be dismissed, no process could Bunb. Rep.
issue against him. Bac. Abr. 87. Eq. Cas. abr.
350. pl. 4. Moseley 175. pl. 89. Bunb. Rep.
183. pl. 258.

Costs shall follow the event of an account. Vid.

2 Vol. Abr. Eq. 237.

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[For more of costs in general, vid. 2 Vol. Abr. Eq. p. 237.

Agreement made rule of court.

A GREEMENTS are frequently figned by the parties, their clerk in court and folicitor, and afterwards defired to be made an order of court: The court generally asks what they are for, and whether no infant or feme covert in the case; for if there be, the court cannot make the agreement of the parties an order of court, because no infant or feme covert can be bound thereby.

And it were to be wished this question were to be asked of the counsel, when motions are consented

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to in open court, and many a plaintiff is caught even at the hearing of the cause, where an infant is defendant, and admits the equity of his bill by the answer: For notwithstanding such admission, yet the plaintiff must prove every thing against the infant, as if his whole equity had been denied. cause an infant is incapable of admitting any thing whatfoever to his prejudice; and the court is bound ex debito justitiæ to take care of all infants who come before them, because they are not able to help themfelves, or look after their own, as men of full age are.

CHAP VIII.

Bills and answers.

A bill to prove a will against the heir at law.

To the Right Honourable Lord High Chancellor of Great Britain.

UMBLY complaining sheweth unto your Lordship, your crater of a second to the second to Lordship, your orator G. S. of W. in the parish of B. in the county of D. an infant under the age of twenty-one years, by M. S. widow, his mother and next friend, That J. S. of W. aforefaid, your orator's late father deceased, being in his lifetime and at the time of his death feifed, possessed of, and interested in a very considerable estate both real and personal; and being minded to settle and dispose of the same, did on or about the fifth day of March which was in the year of our Lord 1727, (being of found and disposing mind, memory and understanding,) duly make and publish his last will

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in writing in the words and figures following, that is to fay, In the name of God, Amen, &c. [Here set forth the will verbatim.] In witness, &c. 7. S. Signed, fealed, published and declared, &c. G. H. 7. K. L. M. Which faid will was duly figned, fealed, published and declared by your orator's faid father in the presence of the persons whose names are subscribed to the said will as witnesses to the same, as in and by the faid will, relation being thereunto had, it doth and may more fully appear. your orator further sheweth unto your Lordship, that shortly after making the faid will, to wit, on the—day of—the faid 7. S. departed this life, without revoking or making any alteration of the fame, so seised and possessed as aforesaid, leaving 7. S. of F. in the faid county of D. his only fon and heir at law; but the faid J. S. having duly made and published his last will and testament in manner aforefaid, your orator well hoped he should have quietly and peaceably held and enjoyed the fame meffuage, farm and lands according to the directions of the faid will, as in all justice and equity he ought to have done. But now fo it is, may it please your Lordship, that the said J. S. your orator's brother and heir at law of the faid J. S. deceased, in order to defeat and defraud your orator of the benefit of his faid father's will, and the premisses thereby to him devised, doth sometimes pretend, that your orator's faid father the faid 7. S. never made and published such last will and testament as aforefaid; or that if he did, he was only tenant for life of the faid premisses so devised to your orator, and therefore had no power to dispose of the same, or that he was not of found and disposing mind, memory and understanding at the time of his making his faid will as aforefaid, and therefore pretends your orator ought not to hold the fame under the faid will. And at other times your ora-K 4

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tor's said brother pretends, that in case his father was of found and disposing mind when he made. published and declared his said will, yet the witnesses did not subscribe their names as witnesses thereunto in his presence, and so the said will is void, and that he the faid 7. S. as heir at law to his faid father, hath a good right and title to the faid premiffes; or that if they did, then he threatens that when the wirnesses to the said will are dead, he will contest the fame and the validity thereof, and fet up his title as heir at law to the faid devited premisses, by means whereof your orator cannot dispose of the said premisses devised to him as aforesaid, nor be quieted in the present possession thereof; All which pretences of the faid 7. S. and his confederates are contrary to equity and good conscience, and tend to injure and oppress your orator. In tender consideration whereof, and forafmuch as your orator cannot examine his witnesses, who are aged and infirm, and not likely to live long, or have their testimony preferved in proof of the faid will, without the aid and assistance of this honourable court; To the end therefore that the faid 7. S. your orator's faid brother, may true answer make to all and singular the premisses as fully and particularly as if the same was here again repeated and interrogated, and may fet forth whether your orator's father was not in his life-time, and at the time of his death, feifed of the premisses before-mentioned, and what estate he had therein, and whether he did not, and when make fuch will as aforefaid, and may fet forth whether he was not of found and disposing mind, memory and understanding at the time of his making and publishing thereof, and whether he had not power to dispose and make such devise of the said premisses in manner aforesaid; and may also set forth what title or interest he your orator's faid brother claims to or in the fame, and that your orator may have his witnesses

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nesses to the said will examined, and their testimony recorded in this honourable court, in order to the perpetuating thereof, so that your orator may have the benefit thereof at any time when there shall be occasion; May it please your Lordship to grant unto your orator his Majesty's most gracious writ of subpana to be directed to the said F. S. thereby commanding him at a certain day, and under a certain pain therein to be inserted, personally to be and appear before your Lordship in this honourable court, then and there to answer the premisses, and to stand to, and abide such order and decree therein, as to your Lordship shall seem agreeable to equity and good conscience.

And your orator shall ever pray, &c.

The answer to the foregoing bill.

The answer of J. S. an infant under the age of twentyone years, by W. M. his guardian, defendant, to the hill of complaint of G. S. an infant, by his next friend M. S. widow, complainant.

HE said defendant, saving and reserving to himself now, and at all times hereafter, all and all manner of benefit and advantage of exception to the manifold incertainties and imperfections in the complainant's said bill of complaint contained, for answer thereunto, or unto so much thereof as materially concerns this defendant to make answer unto, he answereth and saith, That he believeth it to be true, that J. S. in the bill named, sather of him this defendant and the complainant, was in his life-time, and at the time of his decease, seised of the premisses in the bill mentioned to be devised to the complainant; and doth also believe, that the said J. S.

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7. S. being so thereof seised, did about the time for that purpose in the bill mentioned make and duly publish his last will and testament in writing, where. by he devised the said premisses to the complainant as in and by the faid bill of complaint is fet forth and alledged, and that he had power to dispose of the fame, and was of found mind, memory and understanding at the time of his making thereof; but this defendant doth not know the fame of his own knowledge, and therefore hopeth that the complainant shall be compelled to make due proof thereof before he shall be let into any benefit by the faid will; and the rather, for that in case this defendant's faid father had not made fuch will, and thereby such disposition of the premisses as in the bill is fet forth, he this defendant, as he is advised, had been well intitled to the fame as heir at law to his faid father: And this defendant faith, that he being but an infant, and not capable of judging of the matters in the complainant's faid bill contained, humbly hopes this court will take care of him and his interest in the said premisses, in case it shall appear he hath any therein: And this defendant further answering, denies that he ever gave out in speeches, that his faid father had no right or power of disposing of the said premisses, or that he made no fuch will as in bill, or that in case he made any fuch will, yet that he was not of found and disposing mind, memory and understanding when he made the same, as in the bill is untruly suggested: And this defendant denies all and all manner of combination and confederacy wherewith he stands charged in and by the faid bill of complaint; Without that, that there is any other matter or thing material or necessary for this defendant to make answer unto, and not herein, and hereby well and fufficiently answered unto, confessed or avoided, traversed or denied, is true: All which matters and things this defendant

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fendant is ready to aver and prove, as this honourable court shall direct and award, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

Vide post interrogatories for proof of the will.

page .]

A bill of the like kind as the former (Vide chap.

p.) with an answer, insisting that the testatrix was a papist.

TUMBLY complaining, flew unto your Lordship, your orators and oratrix T. C. late of — in the county of —, and E. P. commonly called P. of --- in the county of -, gent. D. T. of --- in the county of , spinster, R. C. of in the said county of _____, gent. and H. B. of ____ in the county of ____, gent. That J. D. late of the parish of --- in the said county of ---, widow, late the relict of G. W. late of - in the county of _____, gent. deceased, and one of the daughters of C. T. late of -, Esq; deceased, who was fon and heir of E. T. the younger, late of ———, knight, also deceased, being in her life-time, and at the time of her death, seised of the reversion and inheritance in fee, (or of some other good estate of inheritance expectant upon the death of E. T. Esq; whereby she had power to dispose of the same;) of and in divers manors, meffuages, lands, tenements and hereditaments in the counties of —— and ——, and elsewhere; and being minded and desirous to dispose of the same in such manner and sort, that no disputes might arise after her death, touching any claim that might be made thereunto, or to any part thereof after her death; and being of found and difpoling mind, memory and understanding, did, on

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or about the ____ day of ____ in the year ___ duly make and publish her last will and testament in writing, and figned the fame in the presence of three credible witnesses, who in her presence sub. fcribed and attested the same in such manner and form as the law requires in cases of devises of lands and tenements and real effates, which last will and testament is in the words following. In the name of God, Amen. I I. D. of ____, widow, do make and ordain this my last will and testament in manner and form following: Item, I give and devise unto my loving friend E. P. of — in the county of _____, gent. and T. C. of ____ in the county of _____, all my estate, &c. [Here set forth the words of the will. In witness whereof! have hereunto fet my hand and feal this - day of ____. in the year of our Lord ____. J. D. Signed, fealed, published and declared by the faid testatrix as her last will and testament in the prefence of us, and attested by us in her presence, T. H. J. B. T. R. And your orators and oratrix further shew unto your Lordship, that the said 7. D. foon after making and publishing of her said will, (to wit) on or about the third day of July last, departed this life without revoking or altering her faid will, leaving S. the wife of J. G. of W-in the county of -, gent. (a detendant herein after named,) her heir at law; And your orators T. C. and E. P. proved the faid will, and took upon themselves the burthen and execution thereof; and your orators and oratrix well hoped that no disputes would have arisen touching the said disposition made by the faid 7. D. of her real effate as aforefaid, or of her power in fo doing, or touching or concerning any claim or demand upon her faid estate or any part thereof. But now fo it is, may it please your Lordship, that the said J. G. and S. his wife, combining and confederating to and with divers persons at

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at present unknown to your orators and oratrix, whose names, when discovered, your orators and oratrix pray may be herein inferted, with apt words to charge them, and each and every of them, how to injure and prevent your orators and oratrix in the devises made them respectively in and by the said will of the faid J. D. sometimes pretend that the faid 7. did not make and publish such will of such date, and to fuch purport and effect as is herein before fet forth, or if she did, yet that the same was not so made, executed and attested, as the law requires in case of a will for passing of real estates, or if so, that the faid J. D. was not of found and disposing mind, memory and understanding at the time of making fuch will, or if the was of found and difpoling mind, memory and understanding at the time of making thereof, that she had not power to devise the same in the manner she has done in and by her faid will; whereas your orators and oratrix expressly charge, and so the said confederates well know in their conscience the truth to be, that the faid J. D. was, at the time of making her faid last will and testament, of found and disposing mind, memory and understanding, and had good and absolute power to make such disposition and devises as she hath done therein and thereby, and that she did accordingly make and publish her faid will in fuch manner and form as the law requires in cases of devises of real estates; and therefore the faid confederates, to defeat your orators and oratrix of the devises and estates therein given and made to them, decline contesting the said will, or the validity thereof, during the lives of the witnesses thereto, but give out, that when the witnesses to the faid will are dead, they will call in question the validity thereof; To avoid which, and that the teltimony of the witnesses to the said will may be perpetuated, And to the end that the said confede-

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rates may, upon their feveral and respective corporal oaths, full, true and perfect answer make, to all and fingular the premiffes, as fully and particularly as if the same were here again repeated, and they thereto interrogated; and more especially that ther may fet forth and discover whether they do not know, have heard or been informed, and in their consciences believe, that the said J. D. did make and publish her last will and testament, of such date purport and effect as herein before for that purpole is fet forth, or of any other, and what date, purpor and effect; and whether she the said 7. D. was not of found and disposing mind, memory and underflanding at the time of making and publishing of the faid last will and testament herein before set forth, and whether the same was not duly published in the presence of such three witnesses, and by them attested in the presence of the said testatrix, as mentioned in the faid will and herein before fet forth. and as the law directs in case of devises of real estates; and whether the said testatrix had not power to make fuch devises of her real estate as in and by the last will and testament she has done, and why, and for what reason she had not power so to do; and whether the faid testatrix J. D. did not depart this life at or about the time herein before for that purpose mentioned, or at any other, and what time; and may fet forth whether they do or do not contest the faid will, or the validity thereof; and that your orators and oratrix may be at liberty to examine their witnesses to the faid will, in order to perpetuate their testimony thereto; May it please your Lordship, Edc.

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The answer of J. G. and S. his wife, defendants, to the amended hill of complaint of T. C. and E. P. otherwise P. gent. and D. T. widow, and others, complainants.

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THE faid defendants now, and at all times hereafter, faving, &c. they answer and say: They admit that the defendant S. is heir at law of 7. D. in the complainant's faid bill named; and these defendants have heard, that by virtue of, or under some limitation or devise in the will of Sir E. T. late of — in the county of grandfather of this defendant S. G. bearing date on or about the —— day of ———, feveral manors, messuages, lands, tenements and hereditaments in the counties of _____ and ____, or the reversion or inheritance thereof, were limited by the faid Sir E. T. to his nephew E. T. for life, remainder to trustees to preserve several contingent remainders and estates therein mentioned; and these defendants have heard, and believe it to be true, that a remainder in the faid premisses was by the faid will limited, after feveral intermediate estates, to the daughter and daughters of M. T. one of the daughters of the faid Sir E. T. and to the daughter and daughters of C. T. the father of the faid J. and to the heirs of all and every fuch daughter and daughters of the faid M. T. and C. T. To hold as tenants in common, and not as joint-tenants; but as touching the will of the faid Sir E. T. and the limitations in the faid will, these defendants, for more certainty, refer thereunto, when the same shall be produced to this honourable court: But these defendants say, that in case the said Sir E. T. duly made such will as aforefaid, that the faid J. D. at the time of making thereof was a papift, and professed the pop.sh resi-

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gion, as these defendants do believe and infift, and believe and infift that the continued to be a papil. and to profess the popish religion from that time und the time of her death, and by means thereof was, as these defendants are advised and insist, by the statute made in the 11th and 12th years of the reign of king William III. intitled, An att for the further preventing the growth of popery, disabled and made incapable to purchase, either in her own name, orin the name of any other person or persons to her own use, or in trust for her, any manors, lands, profits out of the lands, tenements, rents, farms or here ditaments within the kingdom of England, dominion of Wales, and town of Berwick upon Tweed: And these defendants say, that the said E. T. the nephew was a protestant, and survived the said 7. D. and that this defendant S. is heir at law to the faid Sir E. T. And these defendants do believe, and admit it to be true, that the faid 7. was the only furviving daughter of the faid C. T. and that the faid M. I. died without iffue and unmarried; but whether the faid 7. made fuch will as in the complainant's bill is mentioned and fet forth, or whether she was of found memory and understanding at the time of making fuch will, or whether the fame was fo made, published and attested, as in the complainant's bill is fet forth, or as the law requires in case of deviles of land, or in any and what other manner or form, these defendants know not, nor can set forth, nor have been informed thereof, fave by the faid bill. And these defendants say, the complainant E. P. and also D. T. in the bill named, are persons that were educated in the popish religion, and professing the same since the tenth day of April in the year of our Lord 1700. and that at the time of making the will of the faid 7. D. in the bill for that purpose mentioned, if any fuch she made, and also at the time of her death, they the faid E. P. and D. T. and

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and each of them, were papilts and professed the popish religion, and that they and each of them have continued papifts, and to profess the popish religion ever fince the death of the faid 7. D. and that they now are papifts, and do profess the popish religion, and are, as these defendants are advised and infist, by the aforesaid statute made in the 11th and 12th years of the reign of king William III. intitled, An att for the further preventing the growth of popery, disabled and made incapable to purchase, either in their own names, or in the name of any other perfon or persons, to their use, or in trust for them, any manors, lands, profits out of lands, tenements, rents, farms or hereditaments within the kingdom of England, dominion of Wales and town of Berwick upon Tweed; and these defendants say, that they are advised, and humbly insist, that in and by the same statute, all and singular estates, terms, or any other interest or profits whatsoever out of the lands from and after the faid tenth day of April aforesaid in the said year of our Lord 1700. aforefaid to be made, suffered or done, to or for the use or benefit of any papift or person making profession of the popish religion, or upon any trust or confidence mediately or immediately, to or for the benefit or relief of any fuch person or persons, is utterly void, and of none effect, to all intents, constructions or purposes whatsoever; And these defendants, each speaking for themselves, say they are protestants, and claim the benefit of the aforesaid act of Parliament or statute, and are advised, and humbly infilt, that the faid will of the faid 7. D. in the complainant's bill of complaint for that purpose mentioned, if any fuch she made, so far as the same tends mediately or immediately to or for the benefit of the faid E. P. or D. T. or either of them, is utterly void and of none effect, to all intents, conftructions or purposes whatsoever; and that these VOL. II. defendants, defendants, in right of this defendant S. as the faid S. is heir at law to the faid J. D. are intitled to all the real estate of the said J. D. in possession or reversion which was not sufficiently devised by her said will, if any such she made. And these defendants further fay, that the faid J. D. at the time of mak. ing her last will and testament, if any such she made, and at the time of her death, was a papil, and professed the popish religion, and these defendants are advised, and humbly infift, that according to the laws and statutes of this realm now in force, the trusts created by the will of the faid J. D. ought not to be performed and executed as therein is mentioned; and these defendants say, they believe the faid 7. D. died about the — day of and deny all and all manner of unjust and unlawful combination to the intent in the bill charged; without that, that, &c.

A bill against an executor for an account, &c.

Lordship, your orator and oratrix, J. K. of—in the county of—, Esq; and M. his wise, which said M. is the daughter and surviving devise under the last will and testament of B. A. late of—in the county of—, deceased, and also the only sister and heir at law of B. A. the younger, late of—asoresaid, deceased, son of the said B. A. That the said B. A. the father, being seised and possessed of a considerable real and personal estate, duly made and published his last will and testament in writing, bearing date on or about the—day of—1725. and thereby gave to his wife (your oratrix's mother) the sum of two hundred pounds, to be paid her within one year next after his decease; and devised to his son B. A. your oratrix's brother, all that his farm and lands called

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alt de tog fituate in the parish of -- in the said county of -- To hold to the faid B. the fon, his heirs and affigns for ever; and did thereby give and devise unto the said B. the son, and to your oratrix his daughter, all other his real and personal estate, of what kind or quality foever, (except his houshold goods and plate,) which he gave to his faid wife C. (your oratrix's mother) during her natural life; and after her death he gave the faid houshold goods and plate to your oratrix, her executors and administrators, To hold the said personal and real estate (except as before excepted) unto his faid fon the faid B. and your oratrix, their heirs, executors and administrators for ever, subject to the payment of a legacy of ten pounds, to J. A. (one of the brothers of the faid B. A. the testator,) and also to the payment of a legacy of twenty pounds to R. A. another brother of the faid B. A. the testator, and a guinea to his nephew J. W. to be paid them severally within one year next after his death; and the faid B. A. did in and by his faid will defire, that his faid wife might have the care and bringing up of his faid children the faid B. A. and your oratrix during their minority, fo long as she should continue a widow; but in case she should intermarry with any other person after his death, then he willed that his executors might have the care and bringing up of his faid children, and might receive the rents and interest money of his real and personal estate for that purpose; and of his said will he the said testator did nominate and appoint his said brother J. A and J. T. executors. And your orator and oratrix further shew unto your Lordship, that the faid B. A. your oratrix's father, departed this life on or about the —— day of —— 1729. without altering or revoking the faid will; and upon his death the said 7. A. proved the said will in the pretogative court of the Archbishop of Canterbury; L 2

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and the faid J. T. refuling to act under the fait will, the said J. A. took upon himself the burthen and execution thereof, and by virtue thereof poffer. fed himself of all the personal estate of the said B. A. to the amount of ____ and upwards, in trust for the faid B. A. the fon and your oratrix, during their minority; and the faid J. A. also took possession, and received the rents and profits of the real estate of the faid testator devised by his faid will, in trust also for the said B. A. the son, and your oratrix: And your orator and oratrix further shew unto your Lordship, that your oratrix's mother the said C. continued the care and bringing up of your oratin and the faid B. A. her brother, from the death of your oratrix's father the faid B. A. the testator, till about the month of ---- 1730. at which time the intermarried with one H. C. and immediately after her marriage with the faid H. C. the faid 7. A. alone took care of the education and maintenance, and had the bringing up of your oratrix and her faid brother B. A. And your orator and oratrix further shew unto your Lordship, that the said B. A. your oratrix's brother departed this life during his infancy, to wit, in or about the month of - 1731, intestate; and upon his death, your oratrix, as his only fifter and heir at law, became intitled to the faid real estate called ----, devised to him by the will of the faid B. A. the tellator, and also to the moiety or half part of all other the real and personal estate of the said B. A. the testator, devised to the said B. A. your oratrix's brother in and by the faid will: And your orator and oratrix further shew unto your Lordship, that the said J. T. refusing to act in the said executorship, the said 7. A. alone acted under the trust mentioned in the taid will, and possessed himself of all the said testator's personal estate, to the amount of ____ and upwards, and hath received the rents, issues and profaid

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fits of the real estate devised to the said B. A. your oratrix's brother (fince deceased) and your oratrix as aforesaid, ever since the death of the said B. A. the testator, and now continues to receive the same: And your orator and oratrix further shew unto your Lordship, that in or about the month of - last past, your orator and oratrix intermarried; whereby your orator, in right of your oratrix his wife, is become intitled to the real and personal estates of the faid B. A. the testator, subject to the legacies in the faid will mentioned; and your orator and oratrix have fince their intermarriage often applied to the faid J. A. in a friendly manner, and defired him to give your orator an account of the personal estate of the said testator, and of what the same confifted, and also an account of the rents, iffues and profits of his real estate, and to know how and in what manner the fame have been paid and applied, and how much thereof remains in his hands; and that he might pay to your orator and oratrix what, upon the ballance of fuch account, should appear to be due to them, in right of your oratrix, and affign over unto your orator fuch part of the testator's personal estate, as consists in mortgages, bonds, or other fecurities; and to be let into poffession of the real estate of the said B. A. the testator in right of your oratrix his wife, as surviving devisee under the will of the said testator, and as heir at law of her brother the said B. A. and your orator and oratrix well hoped the faid 7. A. would have complied with fuch their reasonable requests, as in justice and equity he ought to have done. now so it is, may it please your Lordship, that the faid J. A. combining and confederating himself to and with the faid J. C. and C. his wife, and to and with divers other persons at present unknown to your orator and oratrix, whoses names, when difcovered, your orator and oratrix pray may be in-L 3

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ferted herein, with apt words to charge them, contriving how to defraud your orator and oratrix, and to defeat your oratrix of the benefit intended by the devise in the faid will, he the faid J. A. her uncle, refuses to give or render to your orator and oratrix, any account whatfoever of the faid teftator's perfonal effate, or of the rents, iffues and profits of the faid real estate, and to pay what is due to your orator in right of your oratrix, or to let your orator into possession of the said real estate; the said 7. A. fometimes pretending, that the personal estate of the faid B. A. the testator, was very small and inconfiderable in value, and not sufficient to pay the debts, legacies, and funeral expences of the faid testator; whereas your orator and oratrix charge, and so the truth is, that the said testator died posfessed of a considerable personal estate, much more than sufficient to pay all his just debts, legacies and funeral expences, with a great overplus; your orator and oratrix charging, that the faid 7. A. hath, out of the monies arising from the personal estate of the faid teftator, paid all the teftator's debts, legacies and funeral expences, and after payment thereof, having a great overplus in his hands, did lend out to feveral persons on mortgages, bonds and other fecurities, feveral large fums of money, and hath received the interest thereof, and applied the fame to his own use; and at other times the said J. A. pretends, that the rents, ifflies and profits of the real estate devised by the said testator, are so fmall, that they will not amount to, or be sufficient to reimburse and satisfy him for the charges and expences he hath been at in the maintenance and education of the faid B. A. the fon and your oratrix, but that there will be a confiderable fum due to him on the balance of accounts for fuch maintenance and education: Whereas your orator and oratrix do charge, that the real estate devised by the testator OJ

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to his fon B. A. was and is of the yearly value of - and upwards, and that the real estate devised by the said testator to the said B. A. his son and your oratrix, was and is of the yearly value of ___ and upwards, amounting together to ___ a year and upwards; and your orator and oratrix do charge, and doubt not but to prove, that the faid 7. A. expended and laid out but very little thereof for the maintenance and education of your oratrix and her faid brother B. A. the manner of their education being very private and no way expensive; and at other times the faid J. A. pretends, that the faid 7. T. the other executor named in the will of the faid testator, or the faid C. your oratrix's mother, possessed themselves of all, or greatest part of the personal estate of the said testator, and that they, or one of them, received the rents, iffues and profits of the real estate ever fince the testator's death. and that he the faid J. A. did not intermeddle therewith; and at other times the faid J. A. doth acknowledge and confess, that he has been, and is the only acting executor under the faid testator's will, and that he hath received all the faid testator's perfonal estate to a considerable value, and that he hath also received the rents, issues and profits of the said real estates devised by the said testator as aforesaid; but then the faid J. A. pretends, that he did lend out all, or a great part thereof, to divers persons at interest on mortgages, bonds, notes and other fecurities, intending the same for the benefit of your oratrix, but that fuch persons have failed in the world and become infolvent, fo that the money lent to them, or the most of them, cannot now be got in or recovered; and the faid J. A. pretends, as he intended the benefit of your oratrix in lending out the faid trust-money, he is not, nor ought to be, accountable for any losses that have happened, or shall hereafter happen on that account; more espe-L4

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cially, as the person or persons to whom he so lent the fame, was and were, at the time of his fo lend. ing the same, in very good circumstances, and reputed to be very rich; but how much of the trust. money, or to whom, or when, or upon what fecurities the same was so lent, he the said 7. A. re. fuses to discover; All which actings and doings of the faid 7. A. and the other confederates, are contrary to right, equity and good conscience, and tend to the great injury of your orator and oratrix. In tender consideration whereof, and foralmuch as matters of this nature are most properly cognizable and relievable in a court of equity before your Lord. ship, and in regard your orator and oratrix cannot compel the faid 7. A to account for the faid testator's personal estate, and the rents and profits of his real estate, or the payment of what is justly due and owing to your orator and oratrix under the will of the faid teffator, but by the aid and affiftance of a court of equity: To the end therefore that the faid 7. A. H. C. and C. his wife, may upon their feveral corporal oaths, true and perfect answer make to all and fingular the premisses, as fully and particularly as if the fame were here again repeated and interrogated, and that the faid 7. A. may fet forth, whether the faid B. A. your oratrix's father, did not make fuch last will and testament as herein before is fet forth, or any other, and what will; and whether the said B. A. the testator, did not depart this life on or about — day of — 1729. without altering or revoking the faid will; and whether upon his death the faid J. A. alone did not prove the same in the prerogative court of Canterbury, or in any other, and what ecclefiastical court; and whether the faid J. A. did not, by virtue thereof, receive and get into his hands, the custody, posfession or power, of all, or such part of the testator's personal estate as he could come by; and that the lent

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the faid 7. A. may fet forth a true and perfect account of all and fingular the personal estate of the faid testator which he died possessed of, or intitled unto, and the natures, kinds, quantities and qualities thereof, and in what the same consisted, and how much, and what part thereof, came to the hands of the faid J. A. or to the hands, custody, power or possession of any other person or persons for his use, and how and in what manner the same has been paid, applied, or disposed of, and how much and what part thereof remains unpaid or undisposed of, and where, and in whose hands, custody or power, all or any part thereof now is or are; and whether the faid 7. A. or who else on the death of the faid testator, did enter upon and take possession of the real estate which the said testator died feifed of, and received the rents, iffues and profits thereof; and that the faid confederates may fet forth a just and true rental or particular of the faid real estate, and where the same lieth and is situate, and by whom occupied or tenanted, and the yearly and other value thereof, as well of fuch part of the faid real estate devised by the said testator to his fon B. A. and his heirs, as that part thereof devised to the said B. A. the son, and your oratrix, and their heirs, and may fet forth who hath or have received the rents, iffues and profits thereof fince the testator's death, and how the same hath been applied and disposed of, and to whom and when, and who now is or are in the perception of the faid rents, issues and profits thereof; and that the faid confederates may answer and set forth by whom, and in what manner the faid B. A. the fon and your oratrix were maintained and educated, and who hath had the care and bringing them up fince the testator's death, to the time of the death of the faid B. A. the fon, and from that time to the time of the intermarriage of your orator and

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and oratrix, and may fet forth how much yearly, and otherwise, hath been paid, laid out and expend. ed for fuch maintenance and education; and may fet forth whether the faid C. your oratrix's faid mother did not, on or about the time herein before for that purpose mentioned, intermarry with the faid H. C. and whether B. A. the fon, did not depart this life in his infancy, about the month of -1731. and whether upon his death your oratrix, as his only fifter and heir at law, did not become, and is not well intitled to, fuch part of the faid testator's real estate, as was devised by the said testator to the faid B. A. the fon, and his heirs, and also to the moiety or half part of all other the testator's real estate, devised by him the said B. A. the son jointly with your oratrix; and that the faid J. A. may also set forth, whether the faid 7. T. as one of the executors under the faid will, or otherwise, to his knowledge or belief, ever received any, and what part of the personal estate, or the rents and profits of the real estate of the said testator, or whether the faid 7. T. as one of the executors under the faid will, or otherwise, to his knowledge or belief, ever received any, or what part of the personal estate, or the rents and profits of the real effate of the faid testator, or whether the said J. T. did not absolutely refuse to act therein, and leave the whole management and care thereof to him the faid J. A. and whether the faid J. A. did not accordingly alone act under the faid will, and possess himself of all the said testator's personal estate, and enter upon and take possession of all the testator's real estate, and receive the rents, iffues and profits thereof; and that the faid confederates may answer and set forth, whether your orator and oratrix did not intermarry in or about the month of ---- last past, and whether they have not many times, and when, fince their intermarriage, both by themselves and friends, applied to the faid J. A. to have an account of the perional estate, and the rents and profits of the real estate of the rly.

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the faid teftator, and to be paid what, upon fuch account, should appear to be due and owing to your orator in right of your oratrix; and whether the faid 7. A. did not, and for what reason, refuse to give or render fuch account, or to pay your orator and oratrix any money on account thereof, or what did the faid 7. A. fay or declare when fuch application was made to him by or on the behalf of your orator and oratrix; and that the faid C. may fet forth, whether she hath received her legacy of two hundred pounds, given her by the will of the faid testator, and when, and from whom, she so received the same; and that the said H. C. and C. may set forth, whether they, or either, and which of them, have received any, and what part of the faid testator's personal estate, or the rents, issues and profits of the faid testator's real estate; and that the said 7. A. may answer and set forth, whether he did at any time, and when, lend to any, and what person or persons, and to whom by name, any, and what part of the faid trust-money, at interest, arising from the personal estate, or the rents and profits of the real estate of the said testator, upon any, and what secufities; and may fet forth, how much he hath received from time to time as interest thereon, and whether the fecurity or fecurities he took for the money he so lent, is, or are good and sufficient securities for the money he so lent, or whether the same are not very infufficient, uncertain and precarious; and whether the monies fo lent by him on fuch fecurities, is not, or are likely to be lost, by the scantiness of the faid fecurities, or by the deaths or infolvencies of the persons to whom the same were lent; and that the faid J. A. may be decreed to come to a just and fair account with your orator and oratrix for the personal estate of the said testator, and for the rents, issues and profits of the said real estate devised by the faid testator to the faid B. A. the son, and to your oratrix, which hath come to his hands, custody,

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dy, possession or power, or which hath been received by him, or any other person or persons by his order, and for his use; and that he may pay to your orator and oratrix what, upon such account, shall appear to be due to them; and that the said J. A. may assign over, and deliver to your orator and oratrix, all such securities which hath, or have been entered into and given for such part of the trustmoney as hath been lent out by the said J. A. or any other person or persons; and that your orator and oratrix may be let into possession of the faid real estate whereof the said testator died seised; and that your orator and oratrix may have such further and other relief in the premisses, as to your Lordship shall seem meet. May it please your Lordship, &c.

A bill brought by creditors for an account of testator's personal estate, and to be paid their debts.

To the Right Honourable, &c.

TUMBLY complaining, flew unto your Lordship, your orators and oratrixes 7. C. of the parish of — in the county of —, gentleman, S. G. of the same parish and county, spinster, S. B. of the same parish and county, woollen draper, A. W. of — in the county of —, butcher, T. W. of the same place, vintner, J. N. of the parish of — in the county of —, innkeeper, and W. L. of — in the county of —, yeoman, creditors of E. S. late of —— in the county of ——, Esq; deceased, That the said E. S. in his life-time, and at the time of his decease, was justly indebted to your orators and oratrixes respectively in the several sums, and in fuch manner as herein after mentioned, that is to fay, To your orator J. C. on a bond or obligation given by the faid E. S. unto your faid orator 7. C. F. C. bearing date on or about the twentieth day of January which was in the year of our Lord one thousand seven hundred and sixty, of the penalty of 230 l. conditioned for the payment of one hundred and fixteen pounds four shillings, and interest, on the twenty-third day of July one thousand seven hundred and fixty-five; and the faid E. S. having paid part thereof to your orator, there is now due to your orator the principal fum of forty-one pounds fourteen shillings, and no more, together with interest for the same, from the ninth day of June one thousand seven hundred and sixty-sive; and the faid E. S. was as aforefaid likewise indebted to your oratrix S. G. in another bond or obligation also given by him the faid E. S. unto your faid oratrix, bearing date on or about the twenty-seventh day of the same January which was in the year of our Lord one thousand seven hundred and sixty-four, of the penalty of fourteen hundred pounds, conditioned for the payment of feven hundred pounds, together with interest for the same, on the twenty-seventh day of August one thousand seven hundred and sixty-sive, whereon the whole principal money still remained due, together with all interest for the same, from the said twenty-seventh day of January one thousand seven hundred and fixty-four, and was also indebted to your oratrix, on simple contract, in the further fum of one hundred pounds and upwards, for monies lent and paid to and for the use of the said E. S. by your faid oratrix: and the faid E. S. was indebted to your orator S. B. in the fum of fifty pounds and upwards, for divers goods fold and delivered unto the faid E. S. by your faid orator, for which your faid orator delivered him a bill in his life-time, and which yet remains unfatisfied and unpaid; To your oratrix A. W. in the fum of twenty-two pounds and upwards, for butchers meat fold and delivered unto him, and for the use of the said E.S. by your said oratrix, for which your oratrix also delivered him a bill

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bill in his life-time; — to your orator T. W. in the fum of twenty-four pounds, and upwards, for wine fold and delivered to him the faid E. S. by your faid orator, for which your orator also delivered him a bill in his life-time, and which remains unpaid and unsatisfied; - to your orator J. N. in the sum of ten pounds and upwards, for the stabling and keeping of a horse for the said E. S. for which your orator likewise delivered him a bill in his life-time. and is still unpaid and unfatisfied; and he was as aforesaid likewise indebted to your orator W. L. his late fervant on a promissary note given by him unto your faid orator, for the fum of twenty-five pounds twelve shillings, bearing date the eighteenth day of November one thousand seven hundred and sixty. four, which was for the ballance of an account then stated between him and your said orator; besides which faid feveral fums herein before mentioned to be due to your faid orators and oratrixes respectively, he the faid E. S. was justly indebted to feveral other persons in divers other sums of money at the time of his death, to a confiderable amount or value in the whole, which have not fince been fatisfied: And your orators and oratrixes further shew unto your Lordship, that the said E. S. being thus indebted, and being possessed of a considerable personal estate, more than sufficient to satisfy all his just debts, the faid E. S. departed this life on or about the -day of -, having first made his last will and testament in writing, bearing date on or about the first day of January which was in the year of our Lord one thousand seven hundred and fifty-eight, and thereby gave and bequeathed unto one J. D. by the name and description of Mrs. D-, daughter to Mr. L-, of -- in the county of -, all his effate both personal and temporal, except fome small legacies therein mentioned; and therein reciting, that he had two thousand the

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seven hundred pounds in the hands of W. T. Esq. of _____, he gave and bequeathed the same to the faid Mrs. D. for her own use and benefit. as therein is mentioned, being the only person that he esteemed and loved; and upon his decease, he having appointed no executor to his will, on or about the twenty-third day of November one thoufand seven hundred and fixty-fix, letters of adminifration with the will annexed, were granted out of the prerogative court of Canterbury to the faid 7. D. who thereupon possessed herself of all the said testator's personal estate, except a debt due from T. F. hereafter named as executor of his uncle T. F. who had received feveral confiderable fums of money, as hereafter is mentioned, out of the rents and profits of the faid E. S. or of his father's estate and otherwife, for which he was and is accountable to the faid E. S. And your orators and oratrixes farther shew, that the faid 7. D. having possessed herself of the faid testator's personal estate as aforesaid, your orators and oratrixes applied themselves in a fair and friendly manner to be paid their faid respective debts out of the fame, as in equity and justice she ought to have done. But now so it is, may it please your Lordship, that the said J. D. combining and confederating to and with the faid T. F. of _____, who is nephew and executor of T. F. lately deceased, and to and with divers other persons at present unknown to your orators and oratrixes, whose names when discovered, your orators and oratrixes pray may be parties hereto, with apt words to charge them, how to defeat and defraud your orators and oratrixes in the premisses, and the said J. D. being in low circumstances, your orators and oratrixes do charge, that she hath applied the said testator's personal estate which has come to her hands, or the greatest part thereof, to her own use, and has wasted the same, and neglects to pay any part thereof to your orators and and oratrixes, or to any or either of them, towards their or any, or either of their faid respective demands, and fometimes pretends, that the faid E. S. did not make fuch last will and testament as herein before is mentioned, and that administration with the will annexed, was not at or about the time herein before for that purpose mentioned, or at any other time, granted to her out of the prerogative court of Canterbury, or out of any other ecclesiastical court; or if the fame was fo granted to her, that nevertheless she hath not, by virtue thereof, received any part of the faid E. S.'s personal estate, at least not sufficient to pay your orators and oratrixes their faid respective demands; and the faid J. D. at other times pretends, that the faid E. S. died possess. ed of little or no personal estate but what shall come from the hands of the faid T. F. the nephew, as executor to the faid T. F. his faid uncle deceased, and that until she shall receive what is due from him as aforefaid, that she shall be incapable of paying your orators and oratrixes, or any or either of them, their faid respective debts, or any part thereof; whereas she well knows, (as the truth is,) that she hath received very confiderable affets from the effate of the faid E. S. and more than sufficient to pay the whole of your orators and oratrixes demands, and particularly she has received from the faid W. T. the said fum of two thousand seven hundred pounds, or some very great sum of money, and the said J. D. refuses to call the said T. F. to an account for a very large fum of money due from him relating thereto, which may prevent her accounting for the fame, and deprive your orators and oratrixes of their faid just demands; and at other times she the said 7. D. threatens to call in the faid debt, and to apply it to her own private use, and declares she will not pay your orators and oratrixes faid feveral demands, although she well knows the same, and every of them,

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to be justly due to your orators and oratrixes as aforesaid; and the said T F. pretends, that neither he nor his faid uncle T. F. was or were at any time indebted to the faid E. S. whereas the contrary does plainly appear by a report made by Master K. one of the Masters of this honourable court, in a cause depending in this honourable court, wherein C. D. and others were plaintiffs, and the faid T. F. and others were defendants, or in some other cause wherein the faid T. F. was party; and that there was due to the said E. S. the sum of two thousand one hundred and fix pounds five shillings and nine pence half-penny, and the further fum of two hundred and thirty-two pounds fixteen shillings and nine pence, making together the fum of two thousand three hundred and thirty-nine pounds two shillings and fixpence halfpenny, or fome fuch fum of money, which remains yet unpaid and unfatisfied; or the faid report is to that or some such effect, and which the faid T. F. has admitted to be true; And your orators and oratrixes aver and expressly charge, as the truth really is, that the faid T. F. now is indebted to his faid estate in that or some greater sum of money, and has received from his faid uncle's effate more than fufficient to pay the faid demand, though he fometimes denies the fame; at other times he admits that he has received sufficient assets of his said uncle's to pay the faid debts, but infifts that he has paid the faid 7. D. all that was due to her faid testator, and has a discharge or discharges for the same; whereas your orators and oratrixes infift, that the faid J. D. has still a good substitting demand on him for the same or some other very large sum of money due to her faid testator; but the faid T. F. infilts, he is only accountable to her for any debt due to the faid testator, and threatens to pay her the fame; in which case your orators and oratrixes would have little hopes of relief from the needy and VOL. II. M infolvent

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infolvent circumstances of the said J. D. who, a your orators and oratrixes charge, has but a fmall support, except only what she got or expects to receive from the estate of the said E. S. All which actings and doings of them the faid confederates are contrary to right, equity and good conscience, and tend to your orators and oratrixes their apparent wrong and injuty. In tender confideration where. of, and forafmuch as your orators and oratrixes wit. neffes, who could prove the truth of all and fingular the premisses aforesaid, are either dead or gome into parts beyond the feas, remote and unknown to your orators and oratrixes, they your faid oraton and oratrixes are only and properly relievable in a court of equity, where matters of fraud and discovery are most properly cognizable; To the mo therefore, that the faid J. D. T. F. and the rest of the confederates, when discovered, may upon their feveral and respective corporal oaths, true and perfect answer make to all and singular the premisses, as fully and particularly as if the same were herein again repeated, and interrogated, according to their and each of their knowledge, remembrance and belief, and more particularly, that the faid J. D. may fet forth and discover, whether the faid E. S. did not make such last will and testament in writing, of fuch date, and to fuch purport and effect, as herein before for that purpose is mentioned, or any and what other will and testament and of what other date, and to what other purport or effect; and whether she the said J. D. did not take out letters of administration with the faid will annexed, and had the fame granted to her out of the prerogative court of Canterbury, or out of any and what other ecclefiaftical court, at or about the time herein before for that purpose mentioned, or at what other time, and whether, on the having fuch administration granted to her, she did not possess herself of so much of the faid , 25

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faid testator's personal estate, as was sufficient to pay your orators and oratrixes faid demands, or how much thereof, and particularly whether she did not receive of and from the faid W. T. the fum of two thousand seven hundred pounds, or any and what other fum of money; and may fet forth, whether the does not refuse to call the faid T. F. to an account for what is due from him to the estate of the faid E. S. and whether she has not come to some, and to what private agreement relating thereto; and whether she does not sometimes threaten to call in the same and apply it to her own private use; and whether she does not know or believe, that your orators and oratrixes faid demands are just and fair demands, or which of them are not, and for what reason she believes the same; and that the said T. F. may fet forth, whether his faid uncle was not indebted to the faid E. S. in a very large fum of money, and whether he the faid T. F. hath not been lately reported debtor to the faid estate in the faid several fums of two thousand one hundred and fix pounds five shillings and nine pence half penny, and two hundred and thirty-two pounds fixteen shillings and nine pence, or what other fum or fums of money; and may fet forth what he knows or believes in his conscience is really due from him to the said J. D. as administratrix of the said E. S. and whether he has not sufficient affets of his said testator's to pay and fatisfy the same; and that the said J. D. may fet forth and discover, whether she hath not applied the affets come to her hands, or some and what part thereof, to her own use, and may admit affets sufficient to pay your orators and oratrixes their faid respective demands, and that she may set forth a full, true, just and particular account of the faid testator's personal estate, with the natures, quantities, qualities, and true and full values thereof, and what hath come to her hands, cuffody or power, M 2

or to the hands, custody or power of any other perfon or persons in trust for her, or to her use, to her knowledge and belief, or with her privity, confent or procurement; and how she or they have applied the same, and that the said J. D. may pay and sa. tisfy your orators and oratrixes faid demands; and that in the mean time the monies in the hands of the faid T. F. or so much thereof as shall be sufficient to pay and fatisfy your orators and oratrixes faid respective demands, with costs of this suit, may be stayed in his hands by injunction of this honourable court; and that in case the said J. D. shall not pay and fatisfy your orators and oratrixes their faid feve. ral and respective demands, that then the said T. F. may be decreed to pay and fatisfy the same unto your orators and oratrixes out of the monies remaining in his hands, belonging or relating to the faid E. S.'s personal estate; and that your orators and oratrixes may have such other and further relief in the premisses, as to your Lordship shall seem meet. it please your Lordship, &c.

A bill by husband and wife for a bond-debt to the wife, while sole, against the heir at law and widow, for an account and satisfaction out of the real and personal estate of the testator.

To the Right Henourable _____ Lord High Chancellor of Great-Britain.

Lordship, your orator and oratrix J. H. of K. in the county of C. yeoman, and J. his wife, That on or about the 13th day of February which was in the year of our Lord 1767, your taid oratrix J. (before her intermarriage with your orator,) advanced

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advanced and lent unto J. N. late of Orton in the county of C. joyner, (fince deceased,) the sum of for fecuring the repayment whereof with interest, after the rate of ten pence for every pound by the year, he the faid J. N. did enter into one bond or writing obligatory, bearing date the faid 13th day of February 1767, by which bond he the faid 7. N. by the name and description of J. N. &c. did acknowledge himself to be bound, and did bind himfelf, his heirs executors and administrators untoyour oratrix then J. T. by the name and description of, &c, in the sum of ---- of lawful money of Great-Britain, with condition thereunder written to be void upon payment of the faid fum of - with interest for the same as aforesaid, unto your oratrix by her then name of J. T. her executors, administrators or assigns, upon the 2d day of February then next ensuing, or else the faid bond or obligation was to be and remain in full force and virtue, as by the faid bond or writing obligatory under the hand and feal of the faid 7. N. bearing date as aforefaid, and ready to be produ ed to this honourable court (relation being thereunto had) it doth and may more at large appear; And your orator and oratrix further shew unto your Lordship, that on or about the 17th Day of December last, (and before any part of the said principal monies and interest due on the faid bond was paid off or discharged,) the said 7. N. departed this life, leaving J. N. his eldest fon and heir at law, and S. N. his widow, and at the time of his death was not only feifed in fee simple of and in divers lands, meffuages and tenements in the parish of 0. and elsewhere in the faid county of C. but likewife possessed, or otherwise well intitled unto a considerable personal estate, consisting of beds, bedding, brals, pewter, and all other forts of houshold-stuff, corn, hay, horses, cows, oxen, sheep, and other live cattle, ploughs, carts, and other implements of huibandry,

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husbandry, money due upon bonds, bills and other specialties, and other debts due upon simple con. tract and accounts; after whose death they the faid 7. N. his fon, and S. N. his widow, did not only immediately enter upon all and every the meffuages. -lands, tenements and real estate (whereof the faid 7. N. deceased was so seised of and intitled unto at the time of his death) but have also entered upon and possessed themselves of all the goods, chattels and personal estate which he the said 7 N. the father died possessed of, and which were much more than fufficient not only to have paid your oratrix her just debt, but all other the debts owing by the faid 7. N. at the time of his decease; and your orator 7. H. having on or about the 23d day of December last intermarried with your oratrix 7. T. he thereby became well intitled (in your oratrix's right) to the faid debt of -- and interest due upon the faid bond, and hath therefore oftentimes in a friendly manner applied to the faid J. N. and S. N. his mother, for payment of the faid debt, which fometimes they promifed to pay unto your orator and oratrix, as in juffice and equity they ought. moto to it is, may it please your Lordship, that the faid J. N. and S. N. his mother, combining and confederating themselves together, and to and with divers persons as yet unknown to your orator and oratrix, whose names when discovered your orator and oratrix pray may be inferted in this their bill, with apt words to charge them as defendants, now to defraud and defeat your ora or and oratrix of their faid debt, they the faid confederates do fet up divers pretences to divide and fwallow up all the real and personal estate of the said J. N. the tacher; and having got into their, or one of their hands and custody, all the deeds, evidences and writings relating to the faid real and personal estate by combination between them, presend that the faid J. N. the other

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the father did on or before his marriage with the faid S. his wife, by a fettlement made in writing in confideration of the faid marriage, and previous thereto, grant and convey all and fingular the meffuages, lands, tenements and hereditaments whereof he died feised or possessed, to the use of her the faid S. for her life for her jointure, in case she should survive the faid J. N. her husband, with remainder after their deaths to their first and all other their fons respectively in tail male, with covenants, that the same were free from all incumbrances; and it is also alledged, that there are several incumbrances by mortgage of the faid premisses made by the faid 7. N. the father, precedent in point of time to the faid marriage fettlement, and that the faid S. hath paid the principal debts out of her faid late husband's personal affets which are come to her hands, and that she will take assignments of the said mortgages to herfelf, or some other in trust for her, to protect her jointure lands and the inheritance thereof settled, or pretended to be settled upon her as aforefaid; and the faid J. N. the fon doth pretend and give out in speeches, that his faid father was not at the time of his death feifed of or intitled unto any lands or real estate whatsoever; whereas he the faid defendant doth very well know (and fo must confess) that his said father did, but a short time before his death, purchase of J. B. Esq; or his trus tees, Lords of the manor of O. in the faid county of C. feveral meffuages and tenements, and al'o feveral parcels or shares of common ground improved and taken up from the moors and wastes of the faid manor, containing at least 150 acres of ground worth at least fifteen pounds an acre to be sold, which are now descended and come unto the said J. N. his fon as his heir at law, and ought (as your orator and oratrix are advised) to be applied towards payment of the debts of the faid J. N. the father; M 4 yet

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yet the same lying in common and intermixed with the lands and grounds of divers other persons, the faid 7. N. the fon refuses to discover or make known to your orator and oratrix how or by what marks or bounds the faid lands are meared or marked out, or in what particular places the fame lie; and your orator and oratrix do expressly charge, that the personal affets of the said 7. N. deceased, which have come to the hands and possession of the said S. N. is of the value of — at the least, the particulars and true value whereof the refuseth to discover; and although your orator and oratrix have frequently applied to the faid S. N. and J. N. her son, and defired an account of the real and personal estate left by her said husband, yet they do severally refuse to give your orator and oratrix any account thereof, or to make your orator and oratrix any fatisfaction in the premisses, but instead thereof threaten to take all advantages which by the strict rules of law they are or shall be intitled unto, and thereby directly to deprive your orator and oratrix of all remedies for recovering their faid just debt. which actings, doings and pretences of the faid confederates, are not only contrary to all right, equity and good conscience, but tend to the great loss and damage of your orator and oratrix. In tender confiberation whereof, and forasmuch as your orator's and oratrix's witnesses, who would prove the truth of all and fingular the premisses, are either dead or gone into places remote beyond the feas, far distant from, and unknown to your orator and oratrix, who cannot expect to have the benefit of their testimonies; and forafmuch as your orator and oratrix have no relief in the premiss, fave only by the favourable aid and affiliance of this honourable court: To the therefore, that the faid S. N. and F. N. her fon, and other the confederates, when discovered, may true and perfect answer make to all and fingular vith

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far the premisses aforesaid, and that as fully and particularly as if the same were here again repeated and interrogated, and more especially, that the said S. N. and J. N. her son, may answer and set forth, whether the faid J. N. the father did not in his lifetime, and at or about the time herein before for that purpose mentioned, borrow and take up at interest of and from your oratrix the sum ofaforesaid, and whether he did not, for securing the repayment thereof with interest, as herein before is mentioned, make and execute fuch bond, and payable at fuch time as herein before is fet forth, or give any other and what security for the same; and whether before payment thereof, the faid 7. N. the elder did not depart this life feised, possessed or intitled unto fuch real and personal estate as aforesaid, or other and what real and perional estate and effects; and that the faid S. N. may fet forth a true and perfect inventory of all and fingular the goods and chattels of the faid 7. N. her deceased husband, which is come to her hands, cultody or power, or to the hands, custody, power or possession of any other person or persons in trust for her, or by her privity, or to her belief, and the particulars whereof the same consisted, and the real and true value of each particular, not by appraisement only, but as each particular hath been fold at, and if not fold, as it is in truth worth to be fold, and at fuch rates, as (if your orator pleases) he may take the same; and also what debts were owing to the said 7. N. deceased, at the time of his death, and by whom, and whether the same were debts due upon bonds, bills, or any and what other fecurities, or how otherwise due and owing, and whether she, or any by her order and privity, and who by name, have or hath received the fame, or any and which of them, or any and what fatisfaction for the same, and from whom and when, and what debts are yet standing out and unpaid, .

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unpaid, and from whom due, and upon account, and also what debts owing by her said husband have been paid or compounded by her or her order, and may set forth each particular payment by her made and to whom, when, and upon what fecurities, or how otherwise due; and that the said confederates. and particularly the faid J. N. may fet forth and discover what messuages, lands or tenements his said father 7. N. died seised or possessed of, or was intitled unto, and where the same lie, and more especially whether the said J. N. his father (or some or one of his ancestors, and under whom he claim. ed) did not shortly before his death, and when, purchase of J. B. herein before named, or his trus. tees, lords of the manor of O. aforesaid, one or more meffuages and tenements, and feveral and how many acres or parcels of ground taken up from the moors and wastes of the faid manor, and where the fame lie, and the particular yearly value of each parcel or estate, and how the same is measured out and bounded, and whether he hath, or claims to have, any right, title, interest, claim and demand unto, or out of the faid premisses, and by what deeds or conveyances, and may fet forth the dates, parties names and confiderations therein contained, or the contents thereof; and that the faid confederates may answer and set forth whether they do not know, or have heard and believe, that your orator intermarried with your oratrix in or about the month of December last, or at what other time; and that the faid S. N. and J. N. her fon may come to a just and fair account with your orator and oratrix, touching the real and personal estate and effects of the faid 7. N. deceased, and that your orator and oratrix may thereout be paid and fatisfied all fuch monies as shall (on a fair and just account) appear to be justly due to them for principal and interest upon the faid bond fo given as aforefaid unto your oratrix.

rix, and that your orator and oratrix may be further and otherwise relieved in the premisses according to equity and good conscience; May it please your Lordship, &c.

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Abill brought by a creditor, as well on behalf of himself as other creditors who shall come in and contribute to the expence of the suit, to be paid debts, and for sale of the testator's real estate, in case his personal estate shall not be sufficient; and to perpetuate the testimony of witnesses.

To the Right Honourable, &c.

TUMBLY complaining, sheweth unto your Lordship, your orator R. B. of B. &c. as well on the behalf of himfelf as other the creditors of B A. late of, $\mathcal{C}c$. deceased, who shall come in and contribute to the expence of this fuit, that the fair B A. being in his life-time, and at the time of his death, feifed in fee of a confiderable real estate, of which he had power to dispose, and also possessed of a confiderable personal estate; and being so seised and possessed, he the said B. A. did duly make and publish his last will and testament in writing, bearing date on or about the nineteenth day of January which was in the year of our Lord 1758. in the presence of three credible witnesses, who also subscribed their names as witnesses thereto in the said testator's prefence; and the faid testator did therein and thereby give and devise to his fon-in-law W.S. and to his grandson B. J. and their heirs, all and every his meffuages, lands, tenements and hereditaments whatsoever; In trust to sell and dispose of the same, and by the monies arising by such sale to pay all

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all his just debts; and the overplus (if any) and also all his goods, chattels, rights, credits, and personal estate, he gave to the said W. S. and B. J. equally to be divided between them, and made them execu. tors of his faid will. And your orator further sheweth. that the faid testator, soon after making of his faid will, departed this life (to wit) on or about the -- day of - which was in the year of our Lord 17 without altering or revoking the fame, and the faid executors, or one of them, duly proved the fame, and the faid executors, or one of them, duly proved the same, and undertook the burthen of the execu. tion thereof, as by the faid will and probate, relation being thereunto had, may more fully and at large appear: And your orator further sheweth unto your Lordship, that the said B. A. was indebted to your orator in the fum of forty pounds by note of his hand bearing date on or about the twentieth day of February, 1756. whereby the faid testa or promised to pay your orator or his order the faid fum of forty pounds, with lawful interest for the same, upon demand, for value received, as by the faid promiffory note under the hand of the faid B. A. now in your orator's custody ready and to be produced, and to which your orator craves leave to refer, may appear. And the faid testator was also indebted to several other persons in divers considerable sums of money. your orator sheweth unto your Lordship, that upon the death of the faid B. A. the faid W. S. and B. J. by virtue of or under colour of the faid will, entered into the receipts of the rents and profits of all the faid real estate of the said B. A. and also possessed themselves of all the goods, chattels, rights, credits and personal estate of the said testator of a very confiderable value, and much more than will be fusficient to pay and discharge all the just detts of the faid elator; and your orator hath feveral times applied himself to the said W. S. and B. J. for a fatisfaction. alfo

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fatisfaction of the faid demand; But the faid W. S. and B. J. combining and confederating to and with W. 7. and E. his wife (which faid E. is only daughter and heir at law of the faid testator) and to and with divers other persons at present unknown to your orator, whose names when discovered your orator prays may be made parties hereto, with apt words to charge them, give out and pretend, that they have feveral claims upon the faid estates, by means whereof your orator is delayed and prevented from receiving his debt or any part thereof; and fometimes the faid executors admit the faid testator's personal estate will be fufficient to pay all his just debts, but insist that they have not been able to collect or get in the fame, and therefore cannot give your orator any account thereof, or make him any fatisfaction for his faid debt; and at other times the faid executors pretend that the faid testator's personal estate is very fmall and inconfiderable, and is not near fufficient to pay his just debts; and the said W. J. and E. his wife do infift that the faid testator's personal estate is more than fufficient to pay all his just debts, and therefore they infift that the faid real estate ought not to be fold, and refuse to join in the sale of the faid estate, pretending that the said will was not duly executed, and that therefore the same descended to the faid E. J. as heir at law to the faid testator. All which actings and doings of the faid confederates are contrary to equity and good conscience, and tend to the great wrong and injury of your orator who is properly relievable in this honourable court. To the end therefore, that the faid W. S. B. J. J. W. and E. his wife may true and perfect answer make to all and fingular the matters and premisses as fully and particularly as if the same were here again repeated and interrogated, and particularly that they may fet forth whether the faid B. A. was not in his life-time, and at the time of his death, ie fed

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feised in fee or otherwise, of and in some good estate of inheritance of a confiderable, or what real estate, and whereof he had a full power to dispose, and whether he the faid testator did not make and duly execute fuch will, and of fuch date as herein before fet forth, or any other and what will, and whether he was not of found and disposing mind, memory and understanding, at the time of making and pub lishing his said last will, and whether the witnesses to the faid will did not duly attest and subscribe their names as witnesses thereto in the presence of the faid testator, and when he died; and that the said confederates may fet forth, whether the faid teffator was not in his life time, and at the time of his death, in debted to your orator in the manner herein before kt forth, or in any other and what manner, as ther know, have, heard, or believe; and that the faid executors may fet forth, whether they, or either and which of them, have or hath, fince the death of the faid testator, proved the faid will, and got into possession of all the personal estate of the said testator, and also entered upon the receipt of the rents and profits of the real estate, and may either admit affets fufficient to pay the demands of your orator, or otherwise may set forth a true and particular account of the said testator's personal estate, and what the same did or doth consist of, with the true and real value thereof, and of every part thereof, and what part thereof hath come to the hands, custody or power of them the faid confederates, or to the hands, cuffody or power of any other person or perfons, and whom by them or by or with their of either of their order or privity, and for their or either of their use; and may set forth how and in what manner they have paid, applied or disposed of the same, and of every part thereof; and that the faid confederates may likewise set forth a full, true and particular account of the faid real estate so devifed

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fed to be fold, and where the fame lies, together with the names of the feveral persons in whose tenure the same now is, and ever since the death of the said testator hath been, together with the true and real annual rents and values thereof; and may fet forth an account of the feveral fums of money which they or any other person or persons, and who for their or either of their use, have or hath received out of, or by the rents and profits of the faid real estates fince the death of the faid testator; and that the faid confederates may fet forth what right, title, interest, property, claim or demand they or any, and which of them respectively have, or pretend to have or claim to the faid real or personal estates of the faid testator; and that in case the said personal estate of the said testator shall not be sufficient to pay and satisfy your orator's faid demands, that then the faid real effate may be fold, or fo much thereof as shall be necessary, and that out of the money arising by such sale, your orator and others the creditors of the faid testator, who shall come in and contribute to the expences of this fuit, may be paid their faid debts with interest and costs, and that all proper parties may join in the fale of the faid real estate in such manner as this honourable court shall direct, and that the several witnesses to the faid will may be examined as to the execution thereof, and their testimony perpetuated; and that your orator may be further and otherwise relieved in all and fingular the premisses, as the nature and circumstance of his case shall require, and as to your Lordship shall seem most meet; May it please your Lordship, &c.

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A bill to secure a jointure, and to supply a defective execution of a power.

HUMBLY complaining, sheweth unto your Lordship, your oratrix M. H. the widow and relict, and also the sole administratrix and residu. ary legatee named in the last will and testament of E. H. of — in the county of —, Esq; your oratrix's late husband deceased, That by indentures of leafe and release bearing date respective. ly, the lease the twenty-second, and the release the twenty-third day of July which was in the year of our Lord 1715, the release being quinquepartite, and made, or mentioned to be made, between your oratrix's late husband by his then name, and addition of E. H. of —— in the county of ——, Esq. and M. H. only fon and heir apparent of the faid E. H. of the first part, and A. H. of C. in the county of ----, widow, relict and devisee for life of M. H. late of _____ aforesaid, Esq. decealed, and R. W. spinster, one of the daughters of Sir 7. W. late of —— in the county of ——, Bart. deceased, and neice of the said A. H. of the fecond part, W. H. of —— in the county of ——, Esq; and J. A. of Gray's Inn in the county of Middlesex, Esq; of the third part, Sir C. P. of ---, London, Knight, and A. K. of the parish of -, London, Gent. of the fourth part, and T.S. ofin the county of Middle sex, Gent. of the fifth part, It is witnessed, that they the said E. H. and M. H. for the confiderations therein mentioned, and for fettling the premisses therein and herein after mentioned, did grant and release (amongst other things) all that manor, or reputed manor or lordship, and tarms of D. B. in — in the county of Kent, with the rights, members and appurtenances thereof, and all

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lother manors, or reputed manors, farms, lands, nements and hereditaments whatfoever of them the id E. H. and M. H. or either of them in D. B. relsewhere in the county of Kent, to hold to the id W. H. and J. A. their heirs and affigns; and ne faid premisses are thereby declared to be and and limited to the faid truffees, to the use and beoof of the faid E. H. for his life without impeachent of waite, with remainder to the faid trustees uring the life of the faid E. to preserve contingent emainders; and after the deceases of the faid E. H. nd of dame E. his then wife, then to the use of the id M. H. and the heirs of his body, with remainer to the first and every other son and sons of the id E. H. by the faid dame E. or any other his fter-taken wife or wives, in tail male, remainder to he use of F. H. A. H. and E. H. daughters of the aid E. H. and all and every other the daughters of he faid E. H. as tenants in common, and not as ointenants, and the heirs of their bodies lawfully fluing; and for want of such issue of any such aughter or daughters, then as to the part or parts her or them so dying without iffue, to the use of he other and others of the faid daughter and daughers and the heirs of their bodies by way of crossemainders, till all and every fuch daughter and aughters are dead without iffue, with remainder to he said M. H his heirs and assigns for ever; and our oratrix further sheweth, that it is provided, delared and agreed by the faid indenture of release, fit should happen the said dame E. H. should die n the life-time of the faid E. H. and he should urvive her, and should afterwards marry any other woman of women, then and in fuch case it should e lawful for him to fettle and affure fo much of he faid manor or reputed manor, or lordship and premisses, as should be of, and amount to, or should not exceed the value of fix hundred pounds per unnum, for a jointure and provision for such after-Vol. II. N

taken wife, or wives, for her or their natural life, lives only, as by the faid in part recited indenting (executed by the faid E. and M. H. and others to parties thereto) now in the cuflody or power of h faid M. H. and to which for greater certainty as the exact date and contents thereof, your orating hereby craves leave to refer herfelf, relation bein thereunto had, may more fully appear. And you oratrix further sheweth, that by indentures of less and release bearing date, the lease the twenty four and the release the twenty-fifth day of May in the year of our Lord 1725, the release being triparing and made between the faid E. H. of the first par your oratrix by her then name and addition of MA spinster, one of the daughters of Sir C. C. lated — in the county of —, Bart. deceafed of the second part. Sir R. W. of - in the county of -, Bart. and C. W. of - London, Esq; of the third part, after reciting the faid indenture of less and release, of the twenty-second and twenty thin days of July 1715. and particularly the faid power thereby referved; and also after reciting that a man riage was then intended shortly to be had and so lemnized between the faid E. H. and your orating it is witnessed, that in consideration of the said in tended marriage, and of the fum of two thouland pounds, being the marriage portion of your and oratrix paid to the faid E. H. before the fealing and delivering thereof, the receipt whereof is thereby acknowledged, and for divers other good causes and confiderations therein mentioned, he the faid E. H. did grant, bargain, fell, release and confirm, unto the faid Sir R. W. and C. W. and to their heirs, all that the faid manor and premisses, with the appurtenances herein before particularly fet forth, and the reversion and reversions, remainder and remainders, rents, iffues and profits thereof, To hold the fame, and every part thereof, unto the faid Sir R. W.

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and C. W. their heirs and affigns, to the use and behoof of the faid E. H. until the faid intended marriage, and after the folemnization thereof, to the use of the said Sir R. W. and C. W. and their heirs, for and during the natural life of your oratrix, upon trust that they and the survivor of them, or the heirs or affigns of fuch furvivor, should yearly and every year during the joint lives of the faid E. H. and your oratrix, out of the rents, iffues and profits of the faid premisses, pay or cause to be paid into the proper hands of your oratrix, or into the hands of fuch other person or persons as she your faid oratrix should direct and appoint, the clear sum of one hundred pounds by four equal payments in the year, in manner in the faid indentures mentioned, to and for your faid oratrix's fole, separate and peculiar use and benefit, and not to be subject to the controul, debts, judgments or intermeddling of the faid E. H. but the act and receipt, acts and receipts of your oratrix alone, and notwithstanding her coverture, or of fuch person as your oratrix should appoint to receive the same, to be a good and sufficient discharge for the same; and after the decease of the said E. H. in case your oratrix should furvive him, upon trust that they the said trustees should, out of the rents, issues and profits of the faid premiffes, pay or cause to be paid unto your oratrix, yearly and every year during her natural life, the clear and full fum of three hundred pounds by four equal payments in the year, in manner therein mentioned, which is thereby agreed and declared to be in full for her jointure, and in lieu and full recompence, fatisfaction and discharge, of and from her dower or thirds at common law, and all. and every right and title of dower which your oratrix could or might claim or be intitled unto out of any of the manors, lands, tenements or hereditaments what soever of him the said E. H. or which N 2

he at any time then after should happen to be seised of or intitled unto; and upon further trust that the faid trustees should and would permit and suffer the faid E. H. during his natural life, and fuch other person or persons as should after his death be intitled to the remainder of the rents, issues or profits of the faid premisses, or would have been so intitled, if the faid indenture had never been made, from and after payment of the faid yearly sums of one hundred pounds and three hundred pounds respectively, to take and receive to his and their own proper use and uses respectively, all and every the rest, residue and remainder of the rents, iffues and profits of the faid premisses. Provided nevertheless, and it is declared and agreed by the same indenture of release, that in case the said E. H. and such other person and persons as should be intitled to the next and immediate remainder or reversion of the said premisses, should yearly and every year pay or cause to be paid unto your oratrix, for and during her natural life, the faid yearly fums of one hundred pounds and three hundred pounds respectively as your oratrix should be intitled thereto, and in such manner as the same were respectively made payable as aforesaid, then no use or benefit should be made of the estate thereby made and granted; the fame being only intended to be made use of in default of such payment by the said E. H. and fuch other person and persons as should be intitled to the remainder or reversion of the said premisses as aforefaid; and the said E. H. for himfelf, his heirs, executors and administrators, did by the faid indenture covenant, promife and agree to and with the faid Sir R. W. and C. W. their executors, administrators and assigns, that he the said E. H. had full power, good right, and lawful and absolute authority, to grant, release and convey unto the faid Sir R. W. and C W. and their heirs, all and fingular the aforesaid premisses in manner aforefaid,

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faid, and that the same were sufficient in value for the uses, intents and purposes aforesaid, and that it should and might be lawful to and for them the faid Sir R. W. and C. W. and their heirs, to hold and enjoy the same accordingly, without the lawful let, fuit, trouble, denial, hindrance, molestation, difturbance or interruption of him the faid E. H. his heirs or affigns, or any other person or persons lawfully claiming or to claim by, from or under him, them or any of them, and also that the said E. H. should and would, at any time during his life, make, do, fuffer and execute all fuch further and other lawful and reasonable acts, devises and asfurances for the more perfect affuring the faid premiffes, with their appurtenances, unto them the faid Sir R. W. and C. W. and their heirs and affigns, for and during the natural life of your oratrix, upon the trusts, and to the intents and purposes aforesaid, as they or their counsel should advise or require, as by one part of the faid recited indenture duly executed by the faid E. H. and now in the custody of your oratrix ready to be produced as this honourable court shall direct, may more fully and at large appear, and to which for greater certainty, as to the exact date and contents thereof, your oratrix hereby craves leave to refer herself: And your oratrix further sheweth, that soon after the executing of the last in part recited indentures in the faid year of our Lord 1725, the faid marriage between the faid E. H. and your oratrix was accordingly had and folemnized; and your oratrix further sheweth, that by indentures of lease and release bearing date, the lease the 27th and the release the 28th day of September in the year of our Lord 1735, the release being tripartite, and made between the faid E. H. of the first part, your oratrix M H. then wife of the faid E. H. and then late M. C. spinster, of the second part, the said Sir R. W. Bart, and the said N 3

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C. W. Esq; of the third part, after reciting the said herein before in part recited indenture of lease and release, dated the 22d and 23d days of July 1715. and the proviso therein contained for the inabling the faid E. H. in case he should happen to survive his then wife dame E. H. to settle and affure fo much of the faid manor and premisses therein and herein before mentioned as should amount to, and should not exceed fix hundred pounds per annum for a jointure and provision for such wife or wives as he should afterwards marry, and after reciting as the truth was and is) that the faid dame E, was dead, and the faid E. H. did her furvive, and had then lately intermarried with your oratrix, and also after reciting the faid therein before in part recited indentures of leafe and releafe, dated the twenty-fourth and twenty-fifth days of May 1725 then last, and that the faid intended marriage had been folemnized between the faid E. H. and your oratrix; and allo after further reciting that the faid E. H. had not then made any larger or other provision for your oratrix than as above mentioned, nor then fully executed his faid power of making a jointure of or to fuch yearly value for any other after-taken wife, in case of his surviving the said dame E. his late wife deceased, and being therefore minded to make a further jointure and provision for your oratrix, in case fhe furvived him, by fully executing the power 10 him given and referved in that behalf by the faid herein before recited indenture quinque partire of release, dated the said twenty third day of July 1715. it is witneffed, that in confideration of the premiffes, and of the great love and affection he had and bore to your faid oratrix his then wife, and for making her a further jointure and provision for her life, in case your oratrix should survive him, and for the fully executing and compleating his faid power, and for divers other confiderations therein mentioned,

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he the faid E. H. did grant, bargain, fell, release, ratify and confirm unto the faid Sir R. W. and C. W. and to their heirs, all that the faid manor and premisses herein before particularly set forth, with the appurtenances, and the reversion and reversions, remainder and remainders, rents, iffues and profits thereof, to hold the faid premisf-s, and every part thereof, to them the faid Sir R. W. and C. W. their heirs and affigns, for and during the natural life of your faid oratrix, upon trust that they the faid Sir R. W. and C. W. and the survivor of them, or the heirs or affigns of fuch furvivor, should and would from and after the decease of your oratrix's faid hufband E. H. in case your said oratrix should him survive, out of the rents, iffues and profits of the faid premisses, pay or cause to be paid unto your oratrix yearly, and every year during her natural life, the further clear and full fum of three hundred pounds by equal payments in manner as in the faid indenture mentioned; and upon further trust, that they the faid trustees should and would permit and suffer the faid E. H. during his natural life, and fuch person or persons as should after his death be intitled to the remainder of the rents, iffues and profits of the faid premisses, or would have been so intitled if the said indentures had never been made, from and after payment of the faid further clear and full yearly fum of three hundred pounds, to take and receive to his and their proper use and uses respectively, all and every the rest, residue and remainder of the rents, issues and profits of the said premisses. Provided nevertheless, and it is thereby declared and agreed by the faid indenture of release, that in case the said E. H. and fuch other person and persons as should be inticled to the next and immediate remainder or reversion of the said premisses, should yearly and every year pay, or cause to be paid unto your oratrix, for and during her natural life, the faid further N 4 clear

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clear and yearly fum of three hundred pounds, is fuch manner as the same was made payable as afore faid, then no use or benefit should be made of the estate thereby made and granted; the same being only intended to be made use of in default of fun payment by the faid E. H. and fuch other person and perfons as should be intitled to the remainder of reversion of the said premisses as aforesaid; and the faid E. H. for himself, his heirs, executors and administrators, did also by the faid indenture covenant promife, grant and agree, with the faid Sir R. W. and C. W. that the faid E. H. had full power, good right, lawful and absolute authority to grant, release and convey unto the faid Sir R. W. and C W and their heirs, all and fingular the aforefaid premilies, in manner aforesaid and that the same were sofficient in value for the uses, intents and purposes aforefaid; and that it should and might be lawful, to and for them the faid R W. and C. W. and their heirs, to hold and enjoy the same accordingly, without the let, suit, trouble, denial, eviction, ejection, molestation, disturbance or interruption of him the said E. H. his heirs or affigns, or any other person law. fully claiming or to claim by, from or under him, them, or any of them, and also that the said E. H. should and would at any time then after, during his life, make, do, suffer and execute, all such further and other lawful and reasonable acts, devises and asfurances, to the more perfect affuring the faid premisses with their appurtenances unto them the said Sir R. W. and C. W. and their heirs and affigns, for and during the natural life of your oratrix, upon the trufts, and to the intents and purposes aforesaid, as they or their counsel should advise or require, as by one part of the faid in part recited indenture duly executed by the faid E. H. and now in the custody of your oratrix, and ready to be produced, as this honourable court shall direct, relation being thereunto

unto had, may more fully and at large appear; and to which, for greater certainty as to the exact date and contents thereof, your oratrix humbly craves leave to refer herself. And your oratrix further sheweth, that by indentures of lease and releafe, bearing date respectively, the leafe the fourteenth, and release the fifteenth days of January in the year of our Lord 1731. the release being tripartite, and made or mentioned to be made between the faid E. H. your oratrix's faid late husband of the first part, your said oratrix of the second part, and the faid Sir R. W. and C. W. of the third part, after reciting the faid herein before in part recited indentures of leafe and release dated the twenty-second and twenty third days of July 1715, and the proviso therein contained for enabling the faid E. H. in case he should happen to survive his then wife dame E. to fettle fo much of the faid manor and premiffes therein and herein beforementioned, as should amount to, and should not exceed six hundred pounds per annum for a jointure, and provision for fuch wife or wives, as he should afterwards marry; and after reciting that the faid E. H. was dead; and also after reciting the said herein before in part recited indentures of leafe and releafe dated the twentyfirst and twenty fifth days of May 1715. and also after reciting that the faid marriage therein mentioned to be intended to be had and folemnized between the faid E. H. and your oratrix, had been had and followized; and also after reciting the said recited indenture of lease and release dated the twenty-seventh and twenty-eighth days of September 1725. it was and is witnessed, that in consideration of the premisses, and for the further, better and more effectual fecuring the payment of the faid feveral and respective yearly sums of one hundred pounds, three hundred pounds, and three hundred pounds in and by the faid several herein before in part recited indentures

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indentures mentioned and fecured to be paid to your oratrix, as a jointure and provision for her life, in case she your said oratrix should happen to survive the faid E. H. and for divers other confiderations therein mentioned, he the faid E. H. did grant, bargain, fell, release, ratify and confirm unto the faid Sir R. W. and C. W. and their heirs, all that the manor and premisses, with the appurtenances herein before particularly fet forth, and the reversion and reversions, remainder and remainders, rents. issues and profits thereof, and of every part thereof, unto the faid Sir R. W. and C. W. and their heirs and affigns, for and during the natural life of your oratrix, upon trust, that they and the survivor of them, or the heirs or affigns of fuch furvivor, should yearly and every year during the joint lives of the faid E. H. and your oratrix, out of the rents, issues and profits of the said premisses, pay or cause to be paid into the proper hands of your oratrix, or into the hands of such other person or persons as she your faid oratrix should direct and appoint, the clear fum of one hundred pounds, by four equal payments in the year, in the manner in the faid indenture mentioned, to and for your oratrix's fole, separate and particular use and benefit, and not to be fubject to the control, debts, engagements or intermeddling of the faid E. H. but the act and receipt, acts and receipts of your oratrix alone, notwithflanding her coverture, or of fuch person as your oratrix should appoint to receive the same, to be a good and sufficient discharge for the same; and after the decease of the said E. H. in case your oratrix should survive him, upon trust, that they the said trustees should out of the rents, issues and profits of the premisses, pay or cause to be paid unto your oratrix yearly and every year during her natural life, the clear and full fum of fix hundred pounds by four equal payments in the year, in the manner therein 1 to

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herein mentioned, which is thereby declared and agreed to be in full for her jointure, and in lieu and full recompence, fatisfaction, and discharge of and for her dower or thirds at common law, and all and every right and title of dower which your oratrix could or might claim or be intitled unto out of any of the manors, lands, tenements or hereditaments whatfoever of him the faid E. H. or which at any time then after should happen to be seised of or intitled unto; and upon further trust, that they the faid trustees should and would permit and suffer the faid E. H. during his life, and fuch other persons or person as should after his death be intitled unto the remainder of the rents, iffues and profits of the faid premisses, or would have been so intitled if the said indenture had never been made from and after payment of the faid yearly fum of one hundred and fix hundred pounds respectively, to take and receive to his and their own proper use and uses respectively all and every the rest, residue, and remainder of the rents, issues and profits of the said premisses: Provided nevertheless, and it is declared and agreed by the said now recited indenture of release, that in case the faid E. H. and fuch other person and persons as should be limited to the next and immediate remainder and reversion of the said premisses, should yearly and every year pay or cause to be paid unto your oratrix, for and during her natural life, the faid yearly fum of one hundred pounds and fix hundred pounds respectively, in such manner as the same is made payable as aforesaid, then no use or benefit should be made of the estate thereby; and by the above recited indentures of leafe and releafe respectively made and granted to the said Sir R. W. and C. W. or either of them, the same being only intended to be made use of in default of such payments by the faid E. H. or fuch other person or perions as should be intitled to the remainder or reverfion

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fion of the faid premisses as aforefaid; and it is by the faid now recited indenture declared and agreed that the faid above recited indenture of fettlement on your oratrix, and also the faid now recited in. denture was and were made to fecure to your oratrix the said sum of one hundred pounds per ann. during the joint lives of the faid E. H. and your oratrix; and after the decease of the said E. H. in case your oratrix should him survive, to secure to your oratrix a jointure not exceeding in the whole fix hundred pounds per annum, according to the power referved and given to the faid E. H. in and by the first above recited indentures of fettlement. And the faid E. H. for himself, his heirs, executors and administrators, did by the now recited indenture of release and covenant, promife and grant to and with the faid Sir R. W. and C. H. their executors, administrators and affigns, that he the faid E. H. had full power, good right, and lawful and absolute authority to grant, release and convey unto the faid Sir R. W. and C. W. and their heirs, all and fingular the aforesaid premiss in manner aforesaid; and that the same were sufficient in value for the uses, intents and purposes aforesaid; and that it should and might be lawful to and for them the faid Sir R. W. and C. W. and their heirs, to hold and enjoy the same accordingly, without the lawful let, suit, trouble, denial, eviction, ejection, molestation, disturbance or interruption of him the faid E. H. his heirs or affigns, or any other person or persons lawfully claiming or to claim by, from or under him, them or any of them; and also that the said E. H. should and would at any time then after during his life make, do, acknowledge, suffer and execute such further and other reasonable acts, devises and affurances for the more perfect affuring the faid premisses with their appurtenances unto them the faid Sir R. W. and is by

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nd C. W. and their heirs and affigns, during the atural life of your oratrix, upon the trusts, and the intents and purposes aforefaid, as they or heir counsel should advise or require, as by one part of the faid indentures duly executed by the faid E. H. and now in the custody of your oratrix ready o be produced, as this honourable court shall diect, relation being thereto had, may more fully and at large appear; and to which for greater cerainty as to the exact dates and contents thereof rour oratrix hereby craves leave to refer herself. And your oratrix further sheweth, that on or about he thirteenth day of October in the year of our Lord 1736. the faid E. H. your oratrix's late hufband departed this life leaving iffue the faid M. H. his only fon and heir at law. Your oratrix further heweth unto your Lordship, that upon or immediately after the faid testator's death the said M. H. entered upon and took possession of all and singular the faid manors and premisses so settled as aforefaid, which your oratrix permitted him to do, well hoping that he the faid M. H. would either have paid or caused to have been paid unto your oratrix, or unto fuch person or persons as she should appoint, the faid clear yearly fum of fix hundred pounds in manner as the same is directed to be paid by the faid feveral herein before recited indentures of fettlement, or fome or one of them, or else that he would have fet out and conveyed to your oratrix, or to such person or persons as she should appoint, so much and such part of the said premisses as would make fix hundred pounds a year for your oratrix's jointure, especially as it does manifestly appear (as your oratrix doth charge and infift from the faid indentures) that it was the intent and meaning of your oratrix's faid late husband, and of all the parties to the faid indentures that your oratrix should have such jointure made to her as he was enabled

to make by virtue of the faid first mentioned in dentures of lease and release of the 22 & 23 of July But now fo it is, may it please your Lord. 1715. ship, that the said M. H. hath entered into a com. bination and confederacy with the faid Sir R. W. and C. W. and with divers other persons at present unknown to your oratrix, whose names when diff. covered your oratrix prays may be inferted in this her bill, with apt words to charge them as parties hereto, how to injure your oratrix in the premiffes, and to deprive and defeat your oratrix of the be nefit of the faid feveral indentures of fettlement: and in order thereto the faid M. H. and his faid confederates fometimes pretend that no fuch indentures of fettlement as are herein before mentioned to bear date on the faid twenty-fecond and twenty-third days of July 1715. were ever made and executed; or that if the fame were fo made and executed, yet that there is no fuch proviso contained therein for enabling the faid testator E. H. (your oratrix's late husband) to settle or assure followers much of the faid premisses herein contained as should be of and amount to, or should not exceed the value of fix hundred pounds a year for a jointure, and provision for such wife or wives as he should then after marry, in case he should happen to survive his wife E. H. Whereas the faid M. H. and his faid confederates well know the truth to be, and your oratrix doth expresly charge that such indentures of fuch date and contents, and with fuch proviso therein contained as herein before mentioned, were duly made and executed; And at other times the faid M. H. and his faid confederates will admit the fame, and will also admit that such several other indentures aforesaid were duly made and executed: But then he and they infift that the fame are not a due and legal execution by the faid E. H. of the power given to him by the faid provide

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in the before mentioned indentures of fettlement of the twenty-fecond and twenty third days of July 1715, fuch power not having been, as he and they fay, well purfued by the faid E. H. in regard that he ought not, and hath no power to fettle any fum of money upon your oratrix, by way or in the nature of a rent-charge, but only to fettle and convey fo much of the faid premisses as would amount to fix hundred pounds a year by way of jointure for your oratrix, and particularly as to the faid deeds made in September 1725, and in January 1731, he the faid M. H. fays and infifts, that they being made after marriage are voluntary and fraudulent as against him; whereas your oratrix doth charge and infift that all the faid deeds are good and valid deeds, and that as the faid first mentioned deed of fettlement, to which the faid M. H. was a party, gave your oratrix's faid late husband a power of making a jointure of fix hundred pounds a year as aforefaid, without mentioning whether the faid jointure should be made before or after marriage, he might and had authority to execute fuch power either before or after marriage, which fact the faid M. H. will at other times admit. But then he infifts, that the faid feveral fettlements fo made for your oratrix's benefit as aforefaid are void, by the frict rules of the common law, as not pursuing the faid power, and that the fame being void at law ought not to be fet up or infifted upon in a court of equity; whereas your oratrix doth charge and infift, that supposing (but not admitting) the faid fettlements to be void or voidable by the strict rules of the common law, yet your oratrix's faid late hufband having by the faid fettlements manifestly declared his intention of fecuring to your oratrix a jointure of fix hundred pounds a year, according to his faid power, the same ought to be secured to your oratrix accordingly by the faid M. H. out of the

the faid premisses; and if there is any defect in the execution of the faid power by your oratrix's faid late husband, which at common law might be taken advantage of by the faid M. H. yet your oratrix doth charge and infift, that fuch defective execution ought to be supplied and made good in equity, for as to bind the faid estate and premisses into whose hands foever the fame shall come. And your oratrix further sheweth, that the said Sir R. W. and C. W. have not acted in the trust reposed in them as aforefaid, and fay and infift that they neither can nor will act therein or in any other trust for your oratrix without being directed thereto and indemnified therein by the decree of this honourable court. In tender consideration whereof, and for as much as your oratrix can obtain no relief in the premisses, except in a court of equity, where matters of this nature are properly cognizable; To the end therefore that the faid M. H. Sir R. W. and C. W. and the rest of the confederates, when discovered, may true and fufficient answer make to all and fingular the premisses, and that as fully, clearly and absolutely as if the same were here again repeated and interrogated, and that not only as they know, but also as they remember, believe, or have heard; and more especially, that the said M. H. and his faid confederates may fet forth, whether the feveral indentures of lease and release as aforesaid were not made, and by and between whom executed; and that the faid confederates may fet forth, whether the faid E. H. did not intermarry with your oratrix at or about the time aforesaid, or when else; and at or about what time did he die, and who hath received the rents and profits of the faid premisses ever fince his death, and to what yearly amount, and who is now in receipt thereof; and that the faid M. H. may discover and produce the faid first mentioned indentures of lease and release,

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and may either be decreed to pay your oratrix her faid rent-charge of fix hundred pounds a year already due and hereafter to grow due, and that the fame may be confirmed to be as this honourable court shall direct, or else that she may have a conveyance of fo much of the faid premisses as will amount to fix hundred pounds a year decreed to be executed to her, or to such person or persons as she shall appoint by the said M. H. during her life, and that the defective execution of the faid power (if any) may be supplied by this honourable court, fo as to bind the faid effate and premisses, and that the faid M.-H. may be decreed to account for the rents and profits of the faid premisses, and that your oratrix may be paid thereout what shall appear to be due to her for the arrears of her faid jointure, or intended jointure, and that the faid Sir R. W. and C. W. may be compelled to join in, do and execute fuch acts and deeds as this honourable court shall think fit to direct, and that your oratrix may be further or otherwise relieved in all and singular the premisses as the nature and circumstance of her cale shall require, and as to your Lordship shall May it please your Lordship, &c. leem meet.

A bill to ferfect a marriage settlement brought by a seme covert by her next friend and her trustees.

To the Right Honourable, &c.

HUMBLY complaining shew unto your Lordship, your orators A. B. and C. D. of, &c. and your oratrix the Right Honourable E. Countess of F. formerly E. H. only child and daughter of G. H. of, &c. lately deceased, by J. K. Esq; her next friend, That the Right Honourable L. Earl Vol. II.

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of F. being seised, or pretending to be seised, of an estate in fee-simple or fee-tail, in divers manors, lands, tenements and hereditaments lying and being in the several counties of M. and N. of a very confiderable yearly value, fometime in the year 1735 made his addresses, by way of courtship, for marriage to the faid E. now Counters of F. and upon a treaty between the faid Earl and the faid G. H. the father of the faid Countefs, (and previous to the intermarriage) it was proposed and agreed by the said G. H. to give his daughter the fum of her marriage portion, and - more at the death of him and his wife; and the faid earl, in confideration thereof, on his part proposed to settle and affure divers manors, lands and hereditaments, effectually to fecure a competent jointure upon your oratrix in case she should survive the said earl, and for a provision for the children that should happen to be born of the faid marriage; and your oraton and oratrix shew, that in order to answer these purposes, previous to the said marriage by indentures of leafe and releafe, the releafe bearing date on or about the 12th day of May 1735, and made be tween the faid L. earl of F. of the first part, the faid G. H. fince deceased, and E. H. now your ontrix, and countess of F. of the second part, and your orators, by the names of A. B. and C. D. of the third part, reciting, that a marriage was then intended (and fince folemnized) between the faid earl of F. and your oratrix, and that the faid G. H. had agreed to give and advance as a marriage portion with his daughter the fum of - in prefent, and the further fum of ——— at the death of him the faid G, H, and his wife; and that in confideration thereof, the faid earl should settle such annuity on his faid intended wife, and all and every the lands, tenements and hereditaments therein comprised, to such uses and upon such trusts, as therein

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is expressed: It is by the said indenture of release witneffed, that in confideration of the faid to him the faid L. earl of F. in hand paid by the faid G. H. as the present marriage portion of his daughter, and of the fum of _____ fecured to be paid as therein is mentioned, and for the making a provision for your oratrix, and for settling the manors, lands and hereditaments therein mentioned, to such uses, and upon such trusts as therein are expressed, the said L. earl of F. granted and released to your orators A. B. and C. D. all those manors of O. P. and Q_i in the feveral counties of M. and N. or one of them, and all messuages, farms, lands, tenements and hereditaments to the faid feveral manors belonging or appertaining, particularly described, lying and being in the several parishes of ——— and ——— in the said several counties of M. and N. To hold the faid premisses unto your orators the faid A. B. and C. D. and their heirs, to the use of the said L. earl of F. until the faid intended marriage should take effect, remainder to the use of the said L. earl of F. for life, without impeachment of waste, remainder to the faid trustees (meaning your orators) to preserve contingent remainders during the life of the faid earl, remainder to the use and purpose that the said E. H. (now your oratrix) might immediately after the decease of the said earl, have and receive a rentcharge of 1600 l. during her life, in bar of her dower, remaind r to your orators A. B. and C. D. for 99 years, upon trust in case such annuity should be in arrear three months, that then they might raile the same out of the rents, issues and profits of the faid premisses; and upon further trust, that until such default, to permit and suffer the ren's, issues and profits thereof, to be had or received by the person or persons next in remainder; remainder to the use of the first and all other the sons of the body

of the said earl, on the body of the said E. H. to be begotten fuccessively in tail male, remainder m the use of the said trustees, their executors, admini strators and affigns, for term of 300 years, remainden to the right heirs of the faid L. earl of F. for even and the trust of the faid term of 300 years is by the faid indenture of release declared to be, in cased failure of iffue male of the faid intended marriage, for raising portions for daughters, and for a main tenance for them until the same should be paid; and the faid earl thereby covenanted for himself, his heirs, executors and administrators, to and with the faid A. B. and C. D. their executors and administrators, that he notwithstanding any act of his own or his ancestors, was lawfully seised of the premise in fee-simple or fee-tail, and that notwithstanding any fuch act as aforefaid, he had in himfelf full and absolute power to convey the said manors, land and hereditaments, to the uses and upon the trus therein expressed; and for the further and better affuring and conveying the faid manors, meffuages, farms, lands, tenements, hereditaments and premisses thereby released, to the several uses, trusts, intents and purposes thereby declared concerning the fame; It is thereby on the part of the faid L. earl of F. covenanted, and for his heirs, executors and administrators, to and with the said A. B. and C. D. their executors and administrators, to suffer a common recovery or recoveries of all the faid pit miffes, to and for the feveral uses, intents and purposes, and upon the trusts, and under and subject to the provisoes and agreements therein before limited and expr fied concerning the same, with a covenant for further affurance, whereby fuch further assurance, and the said recovery thereby covenanted by the fail earl to be suffered, and all other affurances theretofore had, are declared to be to the several uses, intents and purposes, and upon the trufts,

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trusts, and under and subject to the provisoes and agreements therein before limited and appointed concerning the fame, as in and by the faid indentures of release, relation being thereunto had, may, when the fame shall be produced, more fully appear; and your orators and oratrix further shew, that the faid intended marriage foon after took effect, and the said G. H. paid unto the said earl of F. — as the prefent portion of your oratrix the countels, and that ---- part thereof was applied, by the direction of the faid earl, in discharge of feveral mortgages and incumbrances which affected the said premisses, or some part thereof; and the faid earl of F. hath on the back of the faid indenture of release indorsed a receipt for the said ____, and thereby expressed how the same had. been applied, to which your orators and oratrix refer, and your orators and oratrix further shew unto your Lordship, that the said L. earl of F. being feifed not only of the faid manors, lands and hereditaments in the faid in part recited indenture of releafe contained, but likewife of divers other manors, lands and hereditaments in tail male, by virtue of a settlement made on or about the 30th day of March 1687. by G. late earl of F. deceased, great uncle to the now earl, or by fome other fettlement of his ancestors; and the said estate-tail then and now existing, it became necessary for the said L. earl of F. to fuffer a common recovery, or to make some further and other affurance concerning the faid premisses mentioned in the settlement on the marnage of your oratrix, in order the better to fecure in all events the provision thereby intended your oratrix the countefs, and likewife to prevent the trusts and limitations of the said sextlement upon any future contingency that hereafter may arise from being frustrated and rendred of no effect; your orators and oratrix therefore hoped that the 0 3

faid L. earl of F. would have done every thing in his power for the making the faid provisions by the faid fettlement fecure to your oratrix in the event of her furviving the faid earl, and for rendering effec. tual all the faid feveral trufts, uses and limitations of the faid deed in all events; and for that purpole the faid earl hath been frequently applied to by your orators and oratrix; But now to it is, may it please your Lordship, that the said L. earl of F. and the honourable U. P. of, &c. cousin of the faid earl of F. and eldest son and heir of F. P. Esq. deceased, combining and confederating together, let up various pretences to the detriment and injury of your oratrix the now counters of F. and the faid earl of F. to prevent the securing in an effectual manner her jointure, and the other provisions in tended by the faid fettlement, fometimes infift, that the faid fettlement already made as aforefaid is fufficient, and all that is in his power to make, and that he has not a legal freehold in him whereby he can be enabled to make a good tenant to the pracipe for suffering a common recovery, and for that purpose the faid confederates pretend that the title to the premisses settled or intended to be settled as aforefaid, is as follows, to wit, that the faid G. late earl of F. being seised in see of and in divers manors, meffuages, lands, tenements and hereditaments of a confiderable yearly value in the counties of M. and N. did by indentures of lease and release, the release bearing date on or about the 30th day of March 1687. between the Right Honourable the faid G. earl of F. of the one part, and J. K. of Ga. and L. M. of, &c. of the other part, the faid earl G. in confideration of a marriage then before had and folemnized between the faid earl and the countess of F. his then wife, eldest daughter of, Eu and for the further and better affuring the manors, lands, and hereditaments therein after mentioned to

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be limited to the faid Countess for her life, and for her jointure, and for fettling and affuring feveral of the manors, lands, tenements and hereditaments therein after mentioned to descend and come with the Earldom of F. unto the heirs male of the body of the faid Earl of F. and for want of fuch heirs male, to the honourable O. P. brother of the faid Earl, and to his fons and iffue male feverally and fuccessively one after another, according as the faid feveral manors, lands and hereditaments are therein after mentioned to be limited to them; so that the faid feveral manors, lands and hereditaments might be continued together in the family of the faid Earl, and for fettling and conveying other the manors and lands therein mentioned upon feveral uses, intents and purposes, he the said Earl G. did thereby grant and release unto the faid 7. K. and L. M. and to their heirs, all those, &c. To hold the said premisses, with their and every of their appurtenances, unto the faid 7. K. and L. M. their heirs and affigns, to the leveral uses, trusts, intents and purposes, and under the provisoes, powers and agreements therein after mentioned, declared and contained, that is to fay, as for the feveral manors of, &c. to the use of the said Earl G. for his life, without impeachment of waste, and from and after his decease, to the use of the said A. his then Countess, for her life for her jointure; and as to and for the said manors and premisses after their decease, and also as for and concerning all other the manors, meffuages, farms, lands, tenements and hereditaments of him the faid Earl therein before mentioned, to the use of the said Earl G. and the heirs male of his body; and for default of fuch iffue, to the use of his brother O. P. for and during the term of 99 years, if he should so long live, without impeachment of wafte other than for wilful pulling down of houses, stocking up wood, and 0 4

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plowing up meadow grounds, and from and after the determination of the faid term of 99 years, to the use of the said 7. K. and L. M. and their heir, for the life of the faid O. P. to support contingent uses, and from and after the decease of the said 0. P. to the use of \mathcal{Q} . P fon and heir apparent of the faid O. P. for and during the term of 99 years, if the faid Q. P. should so long live, without in. peachment of waste, under the restrictions aforesaid. and from and after the determination of the faid term of 99 years, to the use of the said trustee and their heirs for the life of the faid Q. P. to fup. port the contingent uses; and from and after the decease of the said Q. P. to the use of the 1st, 2d. 3d, and every other the fon and fons of the fail Q. P. severally and successively, and of the several and respective heirs male of the body and bodis of all and every fuch fon and fons lawfully iffuing; and for default of such iffue, to the use of S. P. (late father of the now Earl of F.) one other of the fons of the faid O. P. for and during the term of 99 years, if he should so long live, without inpeachment of waste, under the restrictions afore faid; and from and after the determination of the faid term of og years, to the use of the said trustees and their heirs, for the life of the faid S. P. 10 support the contingent uses; and from and after the decease of the said S. P. to the use of his 1st, 2d, ad, and every other the fon and fons of the faid S. P. feverally and fuccessively, and of the feveral and respective heirs male of the body and bodies of all and every fuch fon and fons lawfully iffuing; and for default of such issue, to the use of all and every other the fon and fons of the faid O. P. in tall male; and for default of fuch iffue, to the use of the faid G. Earl of F. his heirs and assigns for ever, with a power for the faid O. P. Q. P. and S. P. 25 they should severally be in the actual possession of after

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the faid premisses, to make leases not exceeding 21 years at the most improved yearly rent, and that it is therein provided, that the faid O. P. Q. P. and S. B. being in the actual possession of the premisfes, should be impowered to make jointures each not exceeding 1000 l. per ann. and that it is therein provided that the faid Earl G. might, during his life, by any deed or deeds, or by his last will and testament in writing revoke, alter and make void the uses therein before limited; and it is alledged that the faid G. Earl of F. died in the year 1688, without iffue male, and without revoking or altering the faid fettlement, or any of the uses or limitations thereof, but left the faid O. P. his brother, and the faid A. his Countess Dowager; and that upon his death the faid O. then Earl of F. entered upon the faid manors and premisses, and was seised and possessed thereof according to the uses and limitations in the faid deed of fettlement in 1687, and had iffue two fons, to wit, Q. P. and S. P. (which faid S. was the father of the now Earl of F.) and that the faid Earl O. departed this life in the year 1709. and that thereupon Q, his eldest son then Earl of F. (uncle to the now Earl) entered upon the manors and premisses aforesaid, and was possessed thereof by virtue of the settlement of 1687. for the term of 99 years, if he should so long live, and that the faid Earl Q. departed this life in the year 1718 without iffue, so that the said S. P. the second fon of the faid Earl O. (and father of the now Earl) succeeded to the Earldom, and by virtue of the said fettlement of 1687 was possessed of and in the faid manors and premisses of an estate for the term of 99 years, if he should so long live, with remainder to his first and every other son in tail male, and that the faid Earl S. on or about 1733. departed this life, leaving L. (the now Earl of F.) his only son and child; and it is pretended by the faid confederates.

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federates, that by indenture of bargain and fale bearing date on or about the 31st day of March 1715, and afterwards inrolled in the high court of Chancery according to the due form of law made between the faid 2. (then Earl of F.) of the first part, W. E. Esq; and E. H. Gent. of the second part, and J. W. Gent. of the third part, the faid Earl Q. granted, bargained and fold to the faid W. F. and E. H. and their heirs, the feveral Manors or Lordships of O. P. Q. with their appurtenances in the faid feveral counties of M. and N. &c. To hold the same unto and to the use of the said W. E. and E. H. and their heirs, to make them tenants of the freehold in a recovery to be suffered, wherein the faid Earl Q. was to be vouched; and it is thereby declared, that the faid recovery when perfected, and the recoveror therein named and his heirs, should stand and be seised of the said manors and premisses therein comprised, and all other perfons which then after should be seised thereof by virtue of the fame recovery, should stand and be feised thereof to the use of such person and persons, for such estate and estates, and in such manner and for fuch uses and purposes, and upon such trusts, conditions or limitations, as the faid Earl 2, by any writing or writings under his hand and feal testified by two or more witnesses, should direct, limit or appoint; and it is infifted by the faid confederates, that in Easter term in the first year of the reign of his Majesty King George I. a common recovery was accordingly suffered of the said manors and premisses; and it is further insisted by the said confederates, that by indentures of leafe and releafe, bearing date on the 30th and 31st days of March 1715, the release being quadripartite, and made between the faid Earl 2; of the first part, the said W. E. and E. H. of the second part, the said J. W. of the third part, and T. E. and J. E. of the fourth part, ale

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part, It is thereby witneffed, that in order to fettle the faid manors and premisses before mentioned in the name and blood of the faid Earl Q, and as and for a declaration of the uses of the common recovery agreed to be suffered by the said indenture tripartite, as of all other affurances at any time then and after to be had, of all or any of the faid manors and premiffes, it is by the faid indenture declared and agreed between the parties thereto, and the faid Earl Q. thereby directed, limited and appointed, that the faid common recovery fo agreed and intended to be suffered, and all other assurances whatsoever of the premisses to be had, should be and enure, and should be deemed and taken to be and enure, and the faid J. W. the recoverer in the faid recovery, and his heirs, and all other person or perfons which then after should be or stand seised of the fame premisses by virtue of the said recovery, or any other or further affurances which should be made of the fame manors and premisses, should so stand and be feiled of the same premisses to the uses following, that is to fay, to the use of the said Earl 2 and the heirs male of his body, remainder to the use of the Honourable S. P. uncle of the faid Earl (and father of the now Earl) for 99 years, if he should so long live, without impeachment of waste, remainder to the use of the said T. E. and J. E. and their heirs during his life, to preferve contingent uses, remainder to the use of the said L. P. (the now Earl, fon and heir apparent of the faid S. P. for 99 years, if he should so long live, without impeachment of walte, other than for wilful pulling down of houses, stocking up woods, or ploughing up meadow grounds; remainder to the same trustees during his life, to preserve contingent uses, remainder to the first and other sons of the faid L. P. the now Earl, successively in tail male, remainder to the use of all other the sons of the

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the faid S. P. fuccessively in tail male, remainder to the use of the Honourable F. P. and the heirs male of his body, remainder to the use of the said Farl 2. and his heirs; and it is thereby further declared, that it should be lawful to and for the said S. P. and L. P. (the now Earl) as they should respectively be in possession of the said manors and premisses, to grant, limit or appoint any of the premisses to any wife or wives, which either of them should then after marry, for life for their jointure, not exceeding in the whole 1000 l. per annum, and that it should be lawful for the faid Earl 2 at any time during his life, by any deed or deeds, writing or writings by him executed in the presence of three or more witnesses, to revoke the uses before limited or declared, and by the same or any other deed so executed, to limit new uses touching the said premisses, or any part thereof, as he should think fit; and it is alledged by the faid confederates, that the faid Earl 2, in the year 1718, departed this life without iffue, and without revoking any of the uses in the last mentioned deed, and that thereupon the Earldom devolved upon the faid S. P. (father of the now Earl) and the faid L. Earl of F. and the faid U. P. do infift, that by the faid recovery the limitations in tail under the fettlement of 1687 were barred and extinguished; but your orators and oratrix are advised and infift, that such recovery is a void recovery for want of a good tenant to the precipe, inalmuch as the faid Q. Earl of F. was, at the time of executing the faid deed and fuffering the faid common recovery, only tenant for 99 years under the faid fettlement of 1687, or of some other settlement or affurance of the ancestors of the said Earl, and that the freehold was then standing out in the trustees named in the fettlement of 1687, or in some other trustees who did not join in such recovery, and therefore that notwithstanding such deeds and reco-VETY

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very might be executed and fuffered, yet as the faid Q Earl of F. is now dead without iffue, the title and estate hath of right devolved upon the present Earl, who by virtue of the settlement of 1687 is (as your orators and oratrix are advised) tenant in tail in possession of the premisses aforesaid; but by such means and pretences of the faid confederates, the fecuring in an effectual manner the provisions intended your oratrix by the faid fettlement is to her great prejudice delayed, and in case the said L. (the now Earl) should die before your oratrix without making some further assurance, the said settled estate may, by virtue of some former settlement, go over to the faid U. P. or some other remote remainder man, in which event your oratrix may, in some measure, be defeated of the provision intended her by the faid fettlement; though at other times it is admitted by the faid L. Earl of F. and U. P. that the faid common recovery is in itself void, and hath no operation in law; and your oratrix humbly infilts, that the faid fettlement made upon her marriage, and the trusts thereof, ought to be executed and performed in the most beneficial manner, in order to answer the ends and intents thereof; and the rather, as your oratrix, and her father G. H. lately deceased, had no notice of the said settlement and pretended assurances of the ancestors of the prefent Earl now fet up and pretended to be in force : But your oratrix and her father, and the trustees, were affured and did imagine, that the faid Earl was feifed of an estate in tail of the faid premisses mentioned in her marriage fettlement, or of some other estate of inheritance, whereby he might have been inabled to have suffered a common recovery, or of making other affurances for the affuring and effectually fecuring the provisions intended your oratrix by the faid fettlement in case your oratrix should survive the present Earl, and all other pro-

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visions intended by the said settlement; and under the confidence that the faid Earl was fo feifed, the faid G. H. her father, not only paid to the faid Earl, or to his order, and by his direction, the faid fum of - as her marriage portion, but likewise agreed to give and advance unto the faid Earl the further sum of --- upon the death of him and S. his wife, and by indentures of demife and grant of feveral manors, &c. for a term of years thereby created, hath fecured the fame to be fo paid; and your oratrix hopes that in case it should be determined by this honourable court, that the faid L. now Earl of F. is intitled to only an estate for years or life, in the manors, lands and tenements in your oratrix's faid marriage fettlement contained, or any of them, then that he may be obliged out of other his manors, lands and hereditaments, effectually to fecure unto your oratrix the faid rent-charge of 1600 l. a year intended as a jointure and provision for your oratrix by the faid marriage settlement in case your oratrix should survive the said Earl, and likewife to make good and fecure to your oratrix the other provisions made or intended for her by the faid fettlement, or at least fuch part of the said rentcharge and jointure, as the powers by any of the family fettlements of making jointures shall fall **I**hort to answer and make good; And the faid U. P. claims fome right or title to the faid premiffes, and infifts your oratrix's faid fettlement ought not to be carried into execution, but refuses to discover what right he claims, or how he claims the fame, and what reasons he has against your oratrix's said settlement being carried into execution. In tender con: fiberation whereof, and forafmuch as your orators and oratrix are intirely remediless in the premisses according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relieveable;

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relievable; To the end therefore, that the faid L. Earl of F. and U. P. may true and perfect answer make to all and fingular the feveral matters and things herein before fet forth, and that in as full and ample manner as if the same were here repeated, and they were interrogated thereto, and more especially that they may fet forth and discover whether fuch settlement of the 10th day of May 1735, or of fome other date, and when, was not, on or before the intermarriage of the faid Earl L. with your oratrix, made and entred into by the faid L. Earl of F. and whether the fame is not to the purport and effect as herein before is fet forth, or to what other purport and effect, and whether the marriage portion of your oratrix did not amount to the fum as herein before is mentioned, and whether --- part thereof, was not accordingly paid to and received by the faid Earl L. or whether the fame or part thereof was not paid and applied according to the order and direction of the faid Earl L. and whether the further fum of ———, refidue of your oratrix's portion, be not fecured to be paid at the death of the said G. H. and his said wife; and that the said Earl L. may fet forth, whether such settlement bearing date on or about the 30th day of March 1687, or of some other and what date, and to the purport and effect aforesaid, or to some other and what purport and effect, was not executed by the faid Earl G. (great uncle of the now Earl) and that he may produce the faid deed, and may fet forth the fubstance of all and every the deed and deeds herein before mentioned, and likewise all other deeds and writings in his custody or power relating to the faid premisses or to his estate and interest therein, and that he may produce the faid feveral deeds and fettlement before this honourable court, and that the faid U. P. may fet forth, whether he is not the eldest fon and heir of F. P. named in the faid indenture of the

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the 31st of March 1715. and whether the faid F. P. is not dead, and how long fince, and whether he claims any estate in remainder or otherwise, and under what title, in any and which of the premiffes in your oratrix's faid marriage fettlement contained, and why he objects to your oratrix's faid fettlement being effectually carried into execution, and that the faid L. Earl of F. may specifically perform his co. venant in the faid marriage fettlement, and be obliged to fuffer one or more recovery or recoveries, or make fome further and other affurance, of and in respect of the premisses contained in the settlement on the marriage of your oratrix, as this honourable count shall think fit, in order more effectually to secure in all events the faid provisions made your oratrix by the faid fettlement, and that all proper parties may join in fuffering a compleat recovery or recoveries, and in all fuch further and other acts and affurances - in the law, as are necessary for substantiating the faid fettlement, and for carrying the fame into a perfect and effectual execution; and that your orators and oratrix may have such further and other relief touching the premisses as shall be agreeable to justice and the nature of their case : Map it there fore please your Lordship to grant unto your orators and oratrix your Lordship's letter missive directed to the faid L. Earl of F. desiring him to appear to, and answer your orator's faid bill, or in default thereof, his Majesty's most gracious writ of writs of subpana directed to him the said L. Earl of F. and also to the said U. P. thereby commanding them, and every of them, at a certain day and under a certain pain therein to be limited, personally to be and appear before your Lordship in this honourable court, and then and there particular anfwer make to all and fingular the premiffes, and to stand to and abide such further order and decree in the premisses as to your Lordship shall seem meet. And your orators and oratrix shall ever pray, &c.

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A bill for an account of the rents and profits of mortgaged premisses, and for a redemption, &c.

TTUMBLY complaining, sheweth unto your Lordship, your orator M. B. of —— in the county of ---, Esq; that J. B. late of ---otherwise — in the said county of — deceased, being seised and possessed of, and well intitled in fee-simple, or some other good estate of inheritance of, in and to a messuage, farm and lands in _____ aforefaid, and in ____, ___ and __ in the faid county, or in some or one of them, or in some adjacent town or towns, of the yearly value of fixty pounds and upwards, part whereof was and is freehold, and other part thereof copyhold estate of inheritance, and holden of the Lords of with -; and being fo feifed and poffeffed, by indenture bearing date on or about the 25th day of March 1698, made or mentioned to be made between the said J. B. of the one part, and J. K. of -- in the faid county of -- fince deceased, of the other part, in confideration of the fum of fixty pounds paid by the faid J. K. to the faid J. B. he the faid J. B. did grant, bargain, sell, &c. unto the faid 7. K. his executors, administrators and affigns, all ---, part of the said estate, to hold so much thereof as was and is freehold, for the term of five hundred years, to commence from the date of the said indenture, and to hold so much of the said premisses as is copyhold at the will of the Lord or Lords of the respective manors whereof the same VOL. II.

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are holden according to the custom of such manor respectively, in which said indenture is contained a proviso or condition for making void the same on payment of the fums of one pound and fixteen shillings and fixty-one pounds and fixteen shilling, by the faid 7. B. his heirs, executors or administrators, unto the faid 7 K. his executors, administrators and affigns, at the feveral times therein mentioned, and now long fince past; and your orator further shew. eth, that by indenture tripartite bearing date on or about the twenty-ninth day of December 1705, made or mentioned to be made between the faid J. K. of the first part, the said J. B. of the second part, and W. C. and R. W. of the third part, after reciting that the said 7. B. did then stand indebted unto the said 3. K. in the fum of two hundred pounds for principal and interest on the aforesaid mortgage, and for feveral other fums of money at divers times advanced and lent by the faid J. K. to the faid J. B. he the faid 7. K. in confideration of the faid sum of two hundred pounds paid to him by the faid W.C. and R. W. did, by and with the direction and confent of the faid 7. B. affign the faid mortgaged premisses unto them the said W. C. and R. W. to hold to them, their executors, administrators and affigns, for the then refidue of the faid term of 500 years, and the faid J. B. did ratify and confirm the faid premisses to them the said C. and W. their executors, administrators and affigns, for the residue of the faid term of 500 years; and for the better fecuring the repayment of the faid fum of two hundred pounds and interest, the said J. B. did by the same indenture grant, bargain and fell unto the faid C. for h and W. all his the faid B's freehold meffuages, lands, tenements and hereditaments in —— and --- aforesaid, not before assign'd by the same indenture; To hold to them the faid C. and W. their the fa executors, administrators and assigns, for the term ot

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of five hundred years, to commence from the date of the faid last mentioned indenture, subject to a provifo and covenant therein contained, that upon payment of the fum of two hundred and ten pounds in manner therein mentioned, by the said 7. B. his heirs, executors or administrators, unto the faid W. C. and R. W. their executors, administrators or asfigns, they the faid W. C. and R. W. their executors, administrators and assigns, should, at the costs of the faid J. B. his heirs or affigns, re-convey the hade faid mortgaged premisses unto the said J. B. his K. of heirs or assigns, or as he or they should appoint, and free from all incumbrances done by them the said that C. and W. or either of them; and the said J. B. did about the time of the date of the faid last menioned indenture, furrender all his copyhold lands and tenements held of the several manors aforesaid, to the use of them the said W. C. and R. W. and their heirs, as a surther security for the payment of the faid fum of two hundred and ten pounds, and to be void on payment thereof in manner aforesaid; And your orator further sheweth, that soon after the execution of the said last mentioned indenture, he hold the faid J. B. being of found and disposing mind, gns, memory and understanding, did duly make and ears, publish his last will and testament in writing, bearpublish his last will and testament in writing, bearfaid ing date on or about the eighth day of February one thousand seven hundred and sive, which will was by him duly executed in the presence of three credible witnesses according to the statute in that case made and provided, and thereby the said testator did devise all the said mortgaged premisses to E. his wise of C. for her life, and after her decease to his son R. B. ages, and his heirs lawfully to be begotten; and the said testator J. B. died soon after the making of his said will, without altering or revoking the same; and their term the said J. B. by indenture bearing date on or about of P 2

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the first day of April one thousand seven hundred and twelve, between the faid E. B and the faid R. B. of the one part, and the faid R. W. of the other part, the faid W. C. being then dead, after reciting amongst other things, that they the faid E. and R B. had then borrowed of the faid W. the further fur of fixty pounds, they the faid E. and R. B. thereby agreed that the faid freehold and copyhold premife should stand charged not only with the faid sum of two hundred pounds and the interest thereof, but al fo with the faid fum of fixty pounds and interest for the same, after the rate of five pounds for one hundred pounds for a year from the time of the date of the faid last mentioned indenture; and your orator further sheweth, that afterwards, in or about the month of November 1714. the faid R. B. died in testate without leaving any iffue of his body, where upon all his estate, right, interest and equity of redemption of, in and to the faid mortgaged premiss, descended and came to A. the wife of one R. T. In being the only fifter and heir at law of her faid de ceased brother R. B. and also only surviving daughter and heir at law of the faid testator 7. B. and your orator further sheweth, that soon after the death of the faid R. B. by indenture bearing date on a about the first day of January 1714. made between E. D. widow (late the widow and relict of the faid testator J. B.) and the said R. T. and A. his wife of the one part, and the faid R. W. of the other part after reciting that they the faid E. D. and R. T. and A. his wife, then stood indebted to the said R. W. in the faid principal fums of two hundred pounds and fixty pounds herein before mentioned, upon the feveral fecurities aforefaid, and that they had then borrowed of him the further fum of one hundred and forty pounds, it was thereby agreed, that all the aforefaid mortgaged premiffes, as well freehold as copyhold, should stand and be a security, not

only for the faid principal fum of two hundred and fixty pounds, but also for the said sum of one hundred and forty pounds, amounting together to the fum of four hundred pounds, and the interest thereof from the date of the faid last mentioned indenture; and your orator further sheweth, that by indenture quadripartite bearing date on or about the twenty-fixth day of March 1719, made or mentioned to be made between H. W. widow and administratrix of the before-named R. W. of the first part, E. B. of the fecond part, the faid E. D. R. T. and A. his wife of the third part, and D. D. gent, fince deceased, of the fourth part, reciting that all interest of the said four hundred pounds was paid to the day of the date of the faid last mentioned indenture, and that two hundred pounds, part of the faid principal fum of four hundred pounds, was the proper money of the faid E. B. and that the remaining two hundred pounds was the proper money of the faid H. W. as the administratrix of her faid late husband, who died intestate, and reciting that the faid R. T. had occasion for the further sum of eighty pounds, the faid last mentioned indenture witnessed, that in consideration of the said sum of two hundred pounds paid to the faid E. B. and of the faid fum of two hundred pounds paid to the faid H. W. and also in consideration of the said sum of eighty pounds paid to the faid E. D. and R. T. by the faid D. D. she the faid H. W. by and with the consent and direction of the said E. B. E. D. R. T. and A. his wife, did affign all the faid mortgaged premisses to the said D. D. To hold the said freehold premisses to him, his executors, administrators and affigns, for the refidue of the faid terms of five hundred years and five hundred years herein before mentioned; and the faid E. D. R. T. and A his wife thereby ratified and confirmed the faid affignment, and also bargained and fold the faid copyhold premiffes

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premisses to the said D. D. his heirs and assigns, fubject to the proviso contained in the said indenture for making the fame void, as to the faid copyhold premisses, and for re-conveying and re-affigning the faid freehold premisses upon payment of the sum of five hundred and four pounds, as therein is mentioned, that is to fay, the fum of twelve pounds, part of the faid five hundred and four pounds, upon the twenty-seventh day of March in the year of our Lord 1720, and soon after the execution of the faid last mentioned indenture, the said E. D. and the faid R. T. and A. his wife, did in due form of law furrender all and fingular the faid copyhold premisses held of the several manors afore. faid, into the hands of the respective Lords of the faid manors, to the use of the said D. D. and his heirs, under a condition for redemption of the faid copyhold premisses on payment of the said five hundred and four pounds in manner aforefaid, and fatisfaction was thereupon entered on the former furrenders and other instruments herein before mentioned, now in the custody or power of the defendant herein after named, as, had your orator the fame to produce, would more fully and at large appear; And your orator further sheweth unto your Lordship, that in or about the year of our Lord 1726. the faid A. the wife of the faid R. T. died without having made any disposition of her faid equity of redemption, of and in the faid mortgaged premisses, by means whereof the same descended and came to her two daughters and coheirs A. and S. T. who were then infants under the age of twenty-one years, that is to fay, the faid A. was then about ten years of age, and the faid S. about nine years of age, and from and after the death of the faid A. T. the mother, the faid R. T. the father of the faid A. and S. T. the infants, continued in possession of the faid mortgaged premisses until about the year of our Lord

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Lord 1730. and during all that time paid all interest due to the faid D. D. on his faid mortgage; and your orator further sheweth, that E. A. of aforesaid, Esq; being desirous to get the said mortgaged premisses into his own possession, and to become the purchaser of the inheritance and equity of redemption thereof; and apprehending, that if the debt charged on the faid premisses was increased, the faid R. T. and his children would be obliged to fell the fame, he the faid E. A. did with that view and for that purpose, apply to the said D. about the latter end of the year 1729. and did prevail on the faid D. to get himself admitted tenant of the said copyhold estates held as aforesaid of the Lords of the faid four feveral manors (the fines of three of which faid manors were arbitrary; and after fuch admissions the said A. further prevailed on the said D. to furrender all the faid copyhold premiffes unto him the faid A. although the faid D. before fuch application of the faid A. was very well contented with his faid fecurity without putting the mortgaged estate to the charge or expence of such admissions; and the faid A. as foon as the faid copyhold premisses were surrendered to him by the said D. as aforesaid, procured himself to be admitted tenant thereto, by means whereof two fines became due, and were paid to each of the Lords of the said four several manors, on the faid feveral and respective admissions of the faid A, and D, and double fees were also paid to the flewards of the faid four feveral manors, amounting together to the fum of seventy pounds and upwards, which the faid E. A. now infifts the faid mortgaged premisses ought to be charged with; and your orafor further sheweth, that the said E. A. did about the same time prevail on the said D. to assign the faid freehold premisses (so mortgaged to him the faid D. as aforefaid) unto him the faid A. but by what deed, of what date, or for what confideration P 4 fuch

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fuch assignment was made, the faid A. refuses to discover, and the faid E. A. hath ever since Lady. Day 1730, been in possession of all the said mort. gaged premisses, and received the rents and profits thereof, and applied the fame to his own use; and your orator further sheweth, that the said R. T. died on or about the — day of —, after whose death A. T. the elder daughter of the faid R. T. by the faid A. his wife, intermarried with R. P. and attained her age of twenty-one years on or about the fifteenth day of April 1737, and the faid S. T. the younger daughter of the faid R. T. by the faid A. his wife, did also attain her age of twenty-one years on or about the 10th day of April 1738, and your orator having agreed with the faid R. P. and his wife for the absolute purchase of their moiety of the inheritance and equity of redemption of all the faid mortgaged premisses, both freehold and copyhold for the fum of one hundred pounds, they the faid R. P. and his wife, by indentures of lease and releafe, the leafe bearing date the twenty-fecond, and the release the twenty third day of July 1737 in confideration of the fum of one hundred pounds to them paid by your orator, did grant and release unto your orator and his heirs, All that their moiety or half part of and in all and fingular the faid premiffes comprised in the aforesaid mortgages, or in any of them, and all the right, title, interest and equity of redemption of them the faid R. P. and A. his wife, or either of them, of, in and to the same premiss, or any part thereof; To hold unto your orator, his heirs and affigns, to the use of your orator, his heirs and affigns for ever; and pursuant to a covenant in the said indenture of release contained, the said R. P. and A. his wife, joined in levying a fine of the said premisses to the use of your orator, his heirs and affigns for ever; And your orator having also agreed with the said S. T. for the absolute purchase of her moiety of the inheritance and equity of redemption to

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redemption of all the faid mortgaged premisses both freehold and copyhold, for the like fum of one hundred pounds, she the faid S. T. by indenture of leafe and releafe, the leafe bearing date the eleventh, and the release the twelfth day of April 1738. In confideration of the fum of one hundred pounds to her paid by your orator, did grant and release to your orator and his heirs, All that her the faid S.'s moiety or half-part, of and in the fame premisses, and all her right, title, interest and equity of redemption of, in and to the same, and every part thereof; To hold unto your orator, his heirs and affigns, to the use of your orator, his heirs and affigns for ever, and the faid R. P. and A. his wife, and the faid S. T. for the feveral confiderations aforefaid, have feverally furrendered all the faid copyhold premisses herein before mentioned. into the hands of the respective Lords of the said four feveral manors, whereof the fame are holden to the use of your orator, his heirs and affigns for ever, according to the custom of the said manors respectively, as by the faid several indentures of leafe and releafe, and furrenders, it doth and may appear; and your orator further sheweth, that he hath caused his said purchase deeds to be produced and shewn to the said E. A. to be by him inspected and perused, that he might satisfy himself in respect to your orator's title to the equity of redemption of the faid mortgaged premisses; and the faid E. A. accordingly inspected and perused the same, and semed to be satisfied with your orator's title to the equity of redemption of the faid mortgaged premisses; and your orator hath divers times since his faid purchase, by himself and agents, applied to the faid E. A. and in a fair and friendly manner defired him to produce and fhew to your orator or his agents, the deeds and fecurities whereby he claims to have any charge or incumbrance on the faid

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faid mortgaged premisses, that your orator might know what, and how much principal money the faid premisses do now stand lawfully charged with. and liable to; and your orator hath also requested of the faid E. A. that he would come to a just and fair account with your orator touching the rents and profits of the faid mortgaged premisses, received by him, or any other person or persons for his use, or which without his wilful default he might have received, and also touching what is due to him the faid E. A. for principal and interest on the aforefaid mortgages, and your orator hath offered, and doth hereby offer to pay unto the faid E. A. what upon a fair account shall appear to be justly due unto him, and lawfully charged on the faid premisses by virtue of the said mortgages, immediately after fettling the faid account, or at the end of three or fix months then next following, as should be most agreeable to the said E. A. And your orator hath also offered, that if any difficulty should arise in fettling the faid account, the fame should be referred to two indifferent persons to be chosen by the faid A and your orator, and that if any queftion of law should arise, the same should be determined by the opinion of some counsel to be agreed on between them, and your orator had reason to hope that the faid E. A. would have complied with your orator's faid just and reasonable offers and requests: But now so it is, may it please your Lordthip, that the faid E. A. fometimes pretends that he hath an absolute estate in law in the said mortgaged premisses, and that he did, so long ago as the year of our Lord 1730, purchase the equity of redemption of the faid mortgaged premisses of the faid R. T. and that the faid R. T. did, by some indenture or articles of agreement under his hand and feal, covenant and agree, that the faid R. T. and his two daughters herein before named, should and ht

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and would, when and as foon as his faid daughters should respectively attain the age of twenty-one years, release and convey the equity of redemption of the faid mortgaged premiffes unto him the faid E. A. in confideration of a certain fum of money pretended to be paid to the faid R. T. and his faid two daughters, or fome or one of them; whereas your orator chargeth, that if any fuch deeds or articles was or were executed by the faid R. T. as aforefaid (which your orator doth not admit,) yet the faid E. A. never paid any confideration for the fame; and in regard the faid A. and S. T. the daughters of the faid R. T. were then infants under the age of twenty-one years, your orator is advised, and humbly infifts, that they were not in any fort bound thereby, but that the equity of redemption of the faid freehold and copyhold premisses, being so conveyed and surrendered to your orator as aforefaid, he ought to stand in the place of the faid A. and S. the daughters of the faid R. T. and A. his wife, and ought to be let into a redemption of all the faid mortgaged premisses upon payment of what shall appear to be justly due to the said E. A. by and under the aforesaid indenture of mortgage of the twenty-fixth day of March 1719. and at other times the faid E. A. pretends that the faid R. T. borrowed feveral other fums of money of the faid D. and of him the faid E. A. over and besides the faid fum of four hundred and eighty pounds, to the amount in the whole of the fum of seven hundred pounds principal money, or some other considerable fum, and that the fame now stands charged on the faid mortgaged premisses by virtue of some deed or deeds, writing or writings entered into and executed by the faid R. T. whereby he hath covenanted and agreed with the faid D. and E. A. or one of them, to charge the faid mortgaged premisses with the aid fum of feven hundred pounds, or some other conficonfiderable fum of money; but the date, purport and contents of fuch deeds or writings, or for what confideration the same was or were made, the faid E. A. altogether refuses to discover, and hath refused or declined to produce the same to your ora. tor or his agents, and hath pretended that he was advised it was improper for him to produce the fame, fo that your orator cannot certainly know what fum of principal money is really charged on the faid mortgaged premisses; and your orator expressly charges, and so the truth really is, that no fine was ever levied by the faid A. the wife of the faid R. T. nor any furrender made by her, fave only for the charging the faid premisses with the faid fum of four hundred and eighty pounds and interest, in manner aforesaid; and your orator is advised, and humbly insists, that the said more gaged premisses, being the inheritance of the faid A. the wife of the faid R. T. the fame could not in law be made subject to the covenant of the faid R. T. nor to any agreement entered into by the faid R. T. and A. his wife during her coverture, if any fuch there be (which your orator doth not admit;) nor ought the faid A. the wife of the faid R. T. or her iffue, or your orator who claims under them, to be bound by fuch covenant or agreement, nor ought their estate or interest in the premisses to be in any fort affected thereby; but your orator ought to be let into a redemption of all the faid mortgaged premisses, both freehold and copyhold, on payment of the aforesaid principal sum of four hundred and eighty pounds, and interest, without any regard to any covenant or agreement entered into by the faid R. T. alone, or by him and the faid A. his wife during her coverture; and the faid E. A. being the Lord of the manor of — with —, hath taken the court-books relating to the faid manor from his steward, and keeps the same in his

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own custody, and absolutely refuses to admit your orator to that part of the faid copyhold premisses which is holden of his faid manor, and which has been furrendered unto your orator as aforefaid; and the faid E. A. doth also refuse to discover unto your orator, what fums of money have been received by him, or by any other person or persons by his order, or for his use, or which without his wilful default might have been received by and out of the rents and profits of the faid mortgaged premisses; and the faid E. A. hath plowed up the land-marks in order to prevent your orator from discovering the true boundaries of the faid mortgaged premiffes, and hath laid out great fums of money in and about the fences and inclosures of the faid premisses, in an unnecessary and unprofitable manner, and with defign to increase the debt on the said estate, and to prevent your orator from feeking a redemption thereof; All which actings, doings and pretences of the faid E. A. are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator. In tender consideration whereof, and for that your orator is utterly remediless, by the strict rules of the common law, and cannot have a discovery of the truth of the several matters aforefaid, but by the corporal oath of the faid E. A. nor can your orator be let into redemption, or have an account of the rents and profits of the faid mortgaged premisses, without the aid and affiftance of a court of equity before your Lordship, where matters of this nature are properly cognizable and relievable; To the end therefore that the said E. A. may, upon his corporal oath, full, true, diftinct and perfect answer make, to all and fingular the matters and things, herein before fet forth, as fully and particularly as if the same were here again repeated and interrogated; and more especially, that he may fet forth and discover, whether he doth not

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know or believe, that the faid J. B. was feised and poffessed of such freehold and copyhold premisses. of fuch yearly values as herein before mentioned. or any other; and what freehold and copyhold effate or estates, where situate, in whose tenure or occupation, and at, and under what yearly rent; and of what manor or manors the faid copyhold premisses are holden; and whether the said J. B. did not make fuch mortgages of the faid premiffes as aforefaid, or what other mortgages, by any and what deeds or furrenders, of what date, and to what purport or effect, and for what confideration really and truly paid, as he the faid E. A. knows, has heard or believes; and whether the faid J. B. did not make and duly publish such last will and testament, of such date and purport as aforesaid, or to what other purport or effect; and whether the same was duly executed, and before whom, as he knows, believes, or has been informed; and whether the faid J. B. did not die soon after making his said will, or at any other, and what time; and whether the faid E. B. the widow of the faid 7. B. and the faid R. B. the fon and heir of the faid J. B. devisees by and under the will of the said 7. B. did not make fuch mortgage as before mentioned, or any other, and what mortgage of the faid freehold and copyhold premiffes, and by what deeds, furrenders, or other instruments, and when dated and executed, and for what confideration really and truly paid, and whether he doth not know or believe, that the faid R. B. died intestate, and without iffue of his body at the time aforefaid, or at any other, and what time, and whether his estate and interest in the said premisses, did not, as he believes, or has been informed, descend and come unto A. the wife of the faid R. T. as only fifter and heir at law of the faid R. B. and only daughter and heir at law of the said testator J. B. and whether E. B. the

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the relict of the said J. B. and the said T. and his wife did not duly make and execute fuch mortgage or fecurity as aforesaid, or any other, and what mortgage or fecurity of the faid freehold and copyhold premisses, or any, and what part thereof, unto the beforenamed R. W. and by what deeds or infruments, when dated and executed, and for what confideration really and truly paid, and when, and to whom, and where, and before whom, and whether fuch affignment was made of the faid mortgage to the faid D. as aforefaid, and when, and who are parties thereto, and by whom was the fame executed, and before what witnesses, and where do those witnesses live, and may be found or heard of, and whether fuch furrender was made to the faid D. as aforefaid, and what confideration money was really paid, by the faid D. for such affigument and furrender, and when, and where, and before whom was the fame paid; and whether upon furrendering the faid copyhold premisses to the faid D. as aforefaid, fatisfaction was not acknowledged upon all former furrenders, made by way of mortgage of the same premisses as aforesaid, and whether the faid A. the wife of faid R. T. did not die about the time aforefaid, without making any disposition of her equity of redemption of and in the said mortgaged premisses, or any part thereof, and whether the right and equity of redemption of the said A. I. did not, on her death, descend to her two daughters, subject to the estate for life of the said R. T. their father, in the faid freehold premisses, as tenant by the curtefy of England, and if the faid T's faid daughters were not infants of fuch respective ages as aforefaid, at the death of their faid mother, and whether the faid R. T. did not continue in possession of the said mortgaged premisses, and pay all interest on the aforesaid mortgage until the twenty-fixth day of March 1730. or to what other

time, and whether the faid R. T. and his wife made any, and what further mortgage to the faid D____ or the faid E. A. by any, and what deeds, furrenders, or other instruments, and when dated and executed, and for what confideration really and truly paid, and when, and where, and by whom, to whom, and before whom was the same so paid, and that he, the faid E. A. may fet forth the date, sub. stance, and short contents of all deeds, surrenders, and other fecurities whatfoever, in his custody or power, any way affecting the faid mortgaged premisses, either freehold or copyhold, or any part thereof; and whether he, the faid A. did not, for the reasons aforesaid, or for what other reasons, apply to the faid D. and persuade him to get himself admitted to all the faid copyhold premisses, and whether the same are not held of four several manors, and if the fines due to the Lords of the faid manors, or any, and which of them, are not arbitrary, and what such fines and steward fees did amount unto, on the feveral admissions of the said D. and A. respectively, and if the said D. was not content with his fecurity without fuch admission, 'till fuch application was made to him by the faid A. as aforefaid, and if fuch application was not made by the faid A. as aforefaid, and with intent to load the faid estate with expence, so that the said T. and his children might be obliged to fell the fame, and whether he the faid A. did not then defign to become the purchaser thereof, and with that view did not procure the faid D. to affign his faid fecurities and furrender the faid copyhold premisses to him the said A. and if he the said A. did not frequently, by himself or agents, apply to the said D. in order to prevail on him to make fuch affignment and furrender, and if he the faid A. did not pay, or agree to pay the faid D. some premium, prefent, or other gratuity or reward for fo doing, over

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and above what was justly due on the faid securities, and whether the faid A. did fettle any account with the faid D. of what was due to him for principal and interest on the said securities, and that he may fet forth such account in the very words and figures thereof, and whether he hath been admitted to the faid copyhold premisses or any, or what part thereof, and when, and what did the fines and fees, on fuch admission-amount unto, and that the said E. A. may let forth, whether the faid R. T. and his wife did ever levy any fine or make any furrender of the faid freehold or copyhold premisses, or any, and what part thereof, unto the faid D. or E. A. or either of them, for the securing the said sum of four hundred and eighty pounds and interest, as herein is fet forth, and that he may fet forth when fuch fine was levied (if there be any fuch) and what were the uses thereof declared to be, and by what deed or writing, when dated and executed, and who are parties and witnesses thereto, and what consideration was really paid for the same, by whom, and to whom, and when, where, and before whom, and when the faid E. A. or his agents first of all had poffession of the said mortgaged premisses, and from what time he or they have received the rents and profits thereof, and who had the possession, and received the rents of the said premisses until that time, and that he may set forth a full, true and just account of the rents and profits of all and fingular the faid mortgaged premisses, received by him or any other person or persons for his ule, or which, without his wilful default, might have been received, and when, and of whom, and for what the same were severally received, and when, and at what time in particular the faid R. T. died, and whether his faid daughters did not attain their respective ages of twenty-one years at the several times aforefaid, or at what other times; and VOL. II. whether Q

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whether the faid A. the daughter of the faid R.T. did not intermarry with the faid R. P. as afore. faid, and whether your orator hath not purchased the equity of redemption of all the faid mortgaged premisses, both freehold and copyhold of the faid R. P. and A. his wife, and S. T. the daughters and heirs of the faid A. the wife of the faid R. T. and whether the fame hath not been fo conveyed and furrendered to your orator as aforefaid, and whether he the faid E. A. hath not refused to admit your orator to that part of the copyhold premisses which are held of the faid manor of — with and if he hath not taken the court books from his stewards on purpose to prevent your orator's admission to the said premisses, and whether your orator hath not made fuch application, and fuch of fers and requests to him the said A. as aforesaid, and why, and for what reason he refused or declined to accept of fuch offers, or to comply with fuch requests, and if it was not with design to increase the debt on the said mortgaged premisses, so that the fame may not be worth redemption; and more particularly, that the faid A. may answer whether your orator hath not caused his purchast deeds to be produced and shewn to him the said A and whether he did not inspect or peruse the same or whether your orator's agent did not read the fam over to him, and whether he hath not refused to produce or fhew his fecurities to your orator or his agents, and hath declared, that he was advised no to produce the same, and whether the said A. hat not pretended to be abfolutely intitled to the fam mortgaged premisses, and to the equity of redemp tion thereof, under some, and what articles of agree ment, alledged to be entered into between him and the faid R. T. and whether the faid R. T. had right to make fuch agreement, and what confider ation was paid for the fame, and whether the fam T.

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A and S. T. the daughters of the faid R. T. were, or were not infants at the time fuch agreement was entered into, and whether he the faid A. doth not now infift on fuch agreement or not; and that the faid E. A. may fet forth what is now justly due to him, for principal and interest on any, and what mortgage or mortgages of the freehold or copyhold premiffes aforefaid, or any, and what part thereof. and how he computes and makes out the fame, and if he infifts on any principal fum, over and besides the faid four hundred and eighty pounds, that then he may particularly fet forth and discover how, and by what deeds, furrenders, or other conveyances the fame is become chargeable on the premisses aforesaid, and that he may answer and set forth, whether he hath not ploughed up the land-marks and made divers new fences and inclosures on the faid premisses, in a very unnecessary and unprofitable manner, for the purposes, and with the intent beforementioned; and that the faid E. A. may answer all and singular the premisses, not only as to what he himself knows, but also as to what he hath heard, been informed, and believes concerning the fame respectively, and when, and by whom he had fuch information; and that the faid E. A. may come to a fair and just account with your orator for the rents and profits of all the faid mortgaged premisses, both freehold and copyhold, which have been received by him, or any other person or persons for his use, or which, without his wilful default, might have been received, and that upon payment of what shall appear to be justly due to the faid E. A. on the aforesaid mortgages for four hundred and eighty pounds, and interest (after a deim and duction of what hath been, or might have been fo received by him as aforefaid) your orator may be let in to a redemption of all the faid mortgaged onfider the fair premisses; and that the said A. and all persons Q 2 claiming

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claiming under him, may convey and furrender all the faid premisses to your orator and his heirs, or as he shall direct and appoint, free from all incumbrances, done by him the said A. or any person or persons claiming under him; and that your orator may be further and otherwise relieved in the premisses, as the nature of his case shall require, and according to the rules of equity and good conscience. May it please, &c.

A bill for redemption of a mortgage.

HUMBLY complaining sheweth unto your Lordship your orator A. B. of, &c. That your orator having occasion to borrow the sum of fix hundred pounds, did apply himself for that purpose to C. D. of, &c. who agreed to lend to your orator the same; and your orator, for securing the re-payment thereof, with interest, did agree to mortgage to the faid C. D. the messuages, &c. and premisses herein after mentioned, and accordingly your orator did execute to the faid C. D. one indenture bearing date on or about the --- day of - and which was made between your orator of the one part, and the faid C. D. of the other part, and by the faid indenture your orator, in confideration of the fum of fix hundred pounds, to him in hand paid, by the faid C. D. did demise, &c. unto the faid C. D. his executors, administrators and al figns, All that, &c. To hold unto the faid C. D. his executors, administrators and affigns for the term of 99 years, subject to a proviso or condition of re demption on payment of the faid fum of fix hundred pounds with interest for the same, on the -- day of -- 1739; as in and by the faid in denture of mortgage, in the custody of the said C D. when produced, will more fully and at large ap pear; and your orator farther sheweth unto your Lordship, that your orator hath paid all interest for the faid fum of fix hundred pounds till Christmas 1740. to the faid C. D. but the faid C. D. in order to diffress your orator, hath caused declarations in ejectment to be delivered to the tenants in possesfion of the faid premisses, and doth threaten that he will get into possession thereof, and receive the rents and profits of the faid premisses, altho' your orator hath always been, and still is ready to pay to the faid C. D. what is due to him for principal and interest on the faid mortgage, and did actually on or about the — day of — 1740. tender and offer to pay to the faid C. D. the faid fum of fix hundred pounds together with all interest due for the fame, at the time the faid tender was made, being the fum of ——, being for three months interest then due for the said sum of six hundred pounds at five pounds by the hundred by the year; and also the sum of ——— for the costs of the said declarations; and your orator well hoped that the faid C. D. would have received the faid feveral fums of money fo offered and tendered to be paid to him by your orator as aforefaid, and either have delivered up unto your orator the faid mortgage deed to be cancell'd, or have re-affign'd the fame to your orator, as in justice and equity he ought to have done: But now to it is, may it please your Lordship, that the said C. D. combining and confederating himself to and with divers other persons, at present unknown to your orator, whose names when discovered your orator humbly prays may be inferted in this his bill of complaint, with apt and proper words to charge them; he the faid C. D. (in order to deprive and defeat your orator of the benefit of redeeming the faid mortgaged premisses) does pretend and give out in speeches, that your orator did not borrow of the faid C. D. Q 3

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the faid fum of fix hundred pounds, nor execute the faid mortgage deed to the faid C. D. for fecuring the repayment thereof with interest as aforefaid, but does pretend that the faid fum of fix hundred pounds was paid to your orator in confideration of the absolute purchase of the said premiffes for the faid term of 99 years; and at other times he does admit that a deed of the same date as above-mentioned, and made by the fame parties, was executed by your orator, but that your orator did thereby absolutely dispose of the said term of 99 years without such proviso of redemp. tion as above-mentioned; whereas your orator chargeth, and so the said C. D. well knows, as the truth really is, that the faid fum of fix hundred pounds was borrowed upon the terms aforefaid, and upon no other confideration whatfoever, and that fuch deed with fuch proviso as above-mentioned was executed by your orator as aforefaid, for the fecuring the repayment of the faid fum of fix hundred pounds with interest as aforesaid, and that no other deed was executed by your orator relating to the faid fum of fix hundred pounds or otherwise, than what your orator has above mentioned; and at other times the faid C. D. does admit that fuch deed was executed as above mentioned, but does pretend that at the time of the tender above-mentioned, great arrears of interest were due and owing from your orator to the faid C. D. amounting to the fum of one hundred and fifty pounds and upwards, whereas your orator chargeth, and fo the truth really is, that no more than the fum of feven pounds ten shillings was due and owing from your orator to the faid C. D. for the interest of the said fix hundred pounds at the time of the faid tender; and upon the pretences aforesaid the said C. D. refuses to come to any manner of account with your orator, or to reconvey the faid premisses to him, a d is proceeding

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proceeding at law as fast as he can, in order to get into possession of the said premisses; All which actings, doings and pretences of the faid C. D. and his confederates are contrary to equity and good conscience, and tend to your orator's apparent wrong and injury. In tender consideration whereof, and foralmuch as your orator is altogether remediless in the premisses by the strict rules of the common law, and cannot have any discovery or relief touching the matters and things aforesaid, without the aid and affiftance of this honourable court, where matters of account and redemption of effates are properly cognizable and relievable; To the end therefore, that the faid C. D. and his confederates (when discovered) may upon his and their corporal oaths (to the best of his and their remembrance, knowledge and belief) true, perfect and direct answer make to all and fingular the matters and things aforefaid, as fully as if the fame were herein again repeated, and they thereunto particularly interrogated, and more especially that the said C. D. may set forth whether your orator did not, and when, apply to him to borrow the faid fum of fix hundred pounds, or any other fum of money; and whether fuch deed was not executed by your orator, with fuch proviso for the repayment of the faid fum of fix hundred pounds with interest at 5 per cent. as above-mentioned, or how otherwise, and whether your orator did not constantly, and to what time, pay the interest that became due for the faid fum of fix hundred pounds to the faid C. D. or some person or persons, for his use and by his order or direction, and whether your orator did not make such tender of such several sums of money, as above-mentioned, to the faid C. D. or how otherwise, and that the said C. D. may set forth what was due and owing to him on the faid mortgage for principal and interest, and his costs at law respectively, at the time of the said tender, and that he Q 4

he may fet forth why, or for what reason, he refused to receive the faid feveral fums of money fo tendered as above mentioned; and that your orator may be at liberty to redeem the faid mortgaged premisses; and that the faid C. D. upon your orator's paying to him what shall appear to be due to him, for principal and interest on the said mortgage, to. gether with his costs at law at the time the faid feveral fums of money were so tendered to him by your orator as aforefaid, which your orator hereby offers to pay, and that thereupon the faid C. D. may reconvey and reassign to your orator the premisses aforesaid, free and clear of all incumbrances done by him, or any claiming by, from or under him; And that your orator may have and receive fuch farther and other relief in the faid premisses, as the nature of this your orator's case doth or may require, and as to your Lordship shall seem meet; May it please your Lordship (the premisses considered) to grant unto your orator his Majesty's most gracious writ or writs of subpana to be directed to the said C. D. and his confederates when discovered, thereby commanding them, and every of them, at a certain day, and under a certain pain therein to be limited, personally to be and appear before your Lordship in this honourable court, then and there upon their feveral and respective corporal oaths, true and perfect answer to make to all and fingular the premiss; and farther to fland to and abide fuch order and decree therein as to your Lordship shall seem meet. And your orator shall ever pray, &c.

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UMBLY complaining, sheweth unto your Lordship, your orator R. S. of —, Gent. That in or about the year of our Lord 1727. P. J. of _____ in the county of _____ yeoman, being or pretending to be feifed in fee, or of some other good and fufficient estate of inheritance, of and in the manor, meffuages, farms, lands, tenements and hereditaments herein after mentioned; and having occasion for money, did apply to your orator, and defire your orator to lend him the faid P. 7, the fum of —, and in order to fecure the repayment of the same with interest, after the rate of — by the hundred by the year, did propose to mortgage to your orator the faid manor, &c. which he did affirm to your orator were free from all prior incumbrances, fave a term of five hundred years in some part of the same premisses, which (as the said P. 7. informed your orator) was then vested in L. M. of — in the county of — Gent. In trust for the faid P. J. his heirs and affigns, and to be disposed of and affigned as he or they should direct; And your orator further sheweth unto your Lordship, that your orator did comply with the faid request of the said P. J. and did accordingly lend him the faid fum of _____, and for fecuring the repayment thereof with interest as aforesaid, by indentures of lease and release bearing date respectively the twentieth and twenty-first day of April 1727. and made between the faid P. J. (by the name and description of &c.) [if necessary] and 2. his wife, of the one part, and your orator and one A. B. of, &c. Esq; (since deceased) of the other part, the faid P. J. for and in confideration of the um of ____ of lawful, &c. to him in hand paid by your orator, and of five shillings paid to him by the

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the faid A. B. (which fum of - your orator charges was really and truly paid by your orator to the faid P. J.) did grant, bargain, fell, release and confirm unto your orator and the faid A. B. (in their actual possession then being by virtue of the faid in. denture of lease for a year, and by force of the flatute for transferring uses into possession) and to their heirs and affigns, All that the manor of G. with in rights, members and appurtenances in the county of E. and all meffuages, barns, buildings, edifices, stables, yards, gardens, orchards, lands, tenements wood-grounds, leafows, commons, common of pasture, demesne lands, courts baron, courts let, perquifites and profits of courts, fines, heriots, it liefs, amerciaments, rents, fervices, escheats, waifs estrays, deodands, felons goods, warrens, heaths mines, moors, marshes, patronages and benefits of churches and chapels, advowsons, franchis privileges, profits, commodities, advantages, em luments, jurisdictions and hereditaments whatsome to the faid manor belonging or appertaining, or puted to belong or appertain thereunto; And all all that meffuage or tenement, with the appurtent ces, fituate, standing and being in - in the faid county of - on the east fide the faid gre there; and also all that orchard and close of palls thereunto adjoining and belonging; and also those several pieces or parcels of arable land, in meadow and grass-ground, and lot-grass, with the appurtenances, lying dispersedly within the comm fields, liberties, meadows, parishes, boundaries precincts of - and - in the faid count of -, containing by estimation fourscore acre And also all those several pieces or parcels of arab land, lay, meadow and pasture or grass grown and lot grass, with their appurtenances, lying being dispersedly within the common and of fields, liberties, meadows, parishes, precincts, a pour territon

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territories of — and — aforesaid, containing by estimation forty-three acres, thentofore in the tenure or occupation of S. C. and W. J. their afsignee or assignees; And also all that messuage, tenement or farm-house, with the appurtenances, situate, standing and being in - aforesaid, and hentofore in the possession of T. B. yeoman (a messuage or tenement there or then late of W. P. on the north-east part thereof, and the messuage or tenement of the said P. J. therein and herein before mentioned on the fouth-east part thereof) which faid aft mentioned meffuage or farm-house was thenofore purchased by the said P. J. of and from one T. B. And all other the messuages, lands, tene-ments and hereditaments whatsoever of him the said P. J. in possession, reversion, or remainder, situate, ying or being in the parishes of —— and —— foresaid in the said county of - or any of them, nd the reversion and reversions, remainder and re-nainders, rents, issues and profits thereof, and all nainders, rents, issues and profits thereof, and all he estate, right, title, interest, claim and demand and all whatsoever of him the said J. P. of, in and to the ame manor, lands and premisses, and every part and parcel thereof; To hold the said manor, mestidged bases, farms, lands, tenements, hereditaments and remisses, and all and singular other the premisses also a hentioned to be thereby granted and released as not, in the second of the second of the said A. B. their heirs common assigns, To the only proper use and behoof of aries a source of the said A. B. their heirs and assigns for ever: Nevertheless, as to the estate of the grown or condition for redemption in the said indenture of elease contained; if the said P. J. his heirs, exended op utors, administrators or affigns, or any of them, nots, a hould well and truly pay or cause to be paid unto

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your orator, his executors, administrators or as. figns, at or in the ____ in the parish of ___ in the faid county of ---, the full fum of --- of lawful money of Great Britain at or upon the ___ day of - next enfuing the date thereof, and now long fince paft, without any deduction whatfoever, in manner set forth in the said indenture of release; And the faid P. J. did in and by the faid indenture of release, covenant and agree, to and with your orator and the faid A. B. that he and the faid Q. his wife should and would, before the end of Easter term next ensuing the day of the date of the said in. denture of release, acknowledge and levy (and which was accordingly acknowledged and levied) in due form of law one fine Sur conuzance de droit come ceo, &c. to your orator and the faid A. B. and the heirs of your orator, of the faid manor, lands and premisses subject to such redemption as aforesaid; and the faid P. J. did further covenant and agree, that the faid manors, messuages, farms, lands, hereditaments and premisses thereby released as aforesaid, were free from all incumbrances, except and other than the said term of five hundred years, of and in the faid manor and premisses, or the greatest part thereof, then vested in the said L. M. In trust for the faid P. 7. and his heirs, and to be disposed of and affigned as he or they should direct; which term the faid A. W. did thereby direct and declare the faid L. M. his executors and administrators, should stand possessed of and interested in, In trust only for your orator and the faid A. B. and their heir, to attend the inheritance of the same premisses, subject to fuch redemption as aforefaid, with a covenant, that in case of failure of payment of the said sum of --- according to the faid proviso, your orator and the faid A. B. might enter upon and enjoy the faid mortgaged premisses, and the rents and profits thereof, without any interruption of the faid P. J.

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his heirs or affigns, or any other person whatsoever [Here set forth the covenant for further assurance] as in and by the faid indentures of leafe and releafe duly executed by the faid P. J. and Q. his wife, now in your orator's custody, and ready to be produced, as this honourable court shall direct, and to which your orator, as also to the record of the said fine, for greater certainty refers himself, may more fully and at large appear; And your orator charges, that the faid fum of - or any part thereof, was not paid to your orator or any other person on his account according to the faid proviso in the faid indenture of release contained at the time therein mentioned, or at any other time; and your orator further sheweth unto your Lordship, that the said P. 7. having a further occasion for money, did sometime in or about the latter end of February, or on the first of March 1734. again apply to your orator to lend him the further sum of ____, and in order to secure the repayment of the same with interest after the rate of - by the hundred by the year, offered to charge the faid mortgaged premisses therewith, which your orator confented to, and accordingly did advance, lend and pay to the faid P. J. the faid fum of _____, and for fecuring the repayment thereof with interest as aforesaid, by an indorsement made upon the back of the faid indenture of release, bearing date the first day of March 1734. reciting that the faid principal fum of ---- remained wholly due and unpaid, but that all interest for the fame was fully paid and fatisfied to the day of the date thereof; and further reciting (and which your orator expressly charges to be true) that the faid P. I by his bond or obligation bearing even date with the faid indorfement was become bound to your orator in the penal fum of ----- conditioned for the payment of the faid fum of - with interest for the same, after the rate of _____ for every hundred pound

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pound on the first day of September then next enfuing, It is by the faid indorfement witneffed, that for better fecuring the payment of the faid fum of - with interest for the same, after the rate of - per cent. per annum to your orator, his executors, administrators and affigns, the faid P. J. for himself, his heirs, executors and administrators, and for every of them, did thereby covenant, pro. mise and agree, to and with your orator, his executors, administrators and assigns, and every of them. that the faid fum of - and interest, after the rate aforesaid, to be computed from the day of the date thereof, was and should be placed, charged and fecured in and upon the manor, meffuages, farms, lands, tenements and hereditaments comprised in the said indenture of release, and that the manor, meffuages, farms, lands and hereditaments. with their and every of their appurtenances in the faid indenture mentioned to be released to your orator and his heirs, should remain to your orator, his executors, administrators and assigns, a security as well for the faid sum of ——— and interest for the same, after the rate of ——— for every hundred pound by the year, to be accounted from the day of the date thereof, as for the faid fum of ——— fecured by the faid indenture of release, and the growing interest thereof, after the rate of —— for every hundred pounds by the year; and that the faid manor, meffuages, farms, lands, tenements and hereditaments, or any of them, or any part thereof, should not be redeemed or redeemable until not only the faid — and the growing interest thereof as aforesaid, but also the said - then advanced and lent, and the interest thereof as aforesaid, should be fully paid and fatisfied to your orator, his executors, administrators or assigns, as in and by the said indorsement on the back of the said release, and the faid bond duly executed by the faid P. 7. and to which

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which your orator for greater certainty refers himfelf, may more fully and at large appear. And your orator further sheweth unto your Lordship, that the faid fum of ---, or any part thereof, hath not been paid to your orator, neither was the faid fum of -, or any part thereof, paid to your orator according to the condition in the faid in part recited bond at the time therein mentioned, or at any time fince; but the faid two feveral fums of - and are now due and owing to your crator, together with a great arrear of interest on the said several fums after the respective rates aforesaid; and the faid A. B. being dead, the estate and interest in the faid mortgaged premisses is now become absolute in your orator and his heirs, and your orator well hoped that the faid P. J. would either have paid your orator the faid feveral fums of - and and the interest thereof respectively at the rates aforefaid, or would have fuffered your orator to have peaceably and quietly held and enjoyed the faid premisses; and for that purpose your orator hath frequently and in a friendly manner applied himself to the said P. J. and requested him to pay the faid feveral fums of —— and —— and the interest due for the same respectively, or else quietly and peaceably to deliver up possession to your orator of the faid mortgaged premisses, together with all deeds, evidences, writings, escripts, and muniments, court-rolls, rent-rolls, and minutes of courts, relating to or concerning the same; and to release all his right, title and equity of redemption of, in and to the same premisses to your orator and his heirs; the faid P. J. well knowing (as your orator charges the truth to be) that the faid premisses are a very flender and fcanty fecurity for the principal and interest now due to your orator thereon; And your orator well hoped the faid P. J. would have complied with fuch reasonable request of your orator, as

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in justice and equity he ought to have done: But now so it is, may it please your Lordship, That the faid P. J. combining and confederating himself to and with the faid L. M. and divers other persons, at present unknown to your orator, whose names, when discovered, your orator prays may be made parties hereto, with proper and apt words to charge them, now to injure and aggrieve your orator in the premisses, and to defraud him of the faid principal monies and interest due to him, sometimes gives out and pretends, that the faid premisses were mortgaged by the faid P. J. to the faid L. M. for the faid term of 500 years, for fecuring to him fome very confiderable fum of money; and that at the time fuch mortgage was made to your orator as aforesaid, he the said P. J. had only the equity of redemption of the fame; whereas your orator exprefly charges (as the truth really is) that no money was due to the faid L. M. on such term, but that the faid L. M. is feifed of the faid term of 500 years, and his name made use of barely as a trustee; and the faid term is now vested in him, in trust for your orator and his heirs, to attend the inheritance of the faid premisses; nevertheless the said L. M. refuses to let your orator bring an ejectment, in his name, for recovery of the premisses comprised in the said 500 years term; and at other times the faid P. J. pretends that he hath confessed judgments, statutes and recognizances to feveral persons for several considerable fums of money, and made feveral other grants, conveyances, and fecret incumbrances, which will affect the faid premisses, prior to your orator's title to the same, but refuses to discover the same, or to whom he hath fo fold, mortgaged or incumbered the premisses as aforesaid, or the respective confiderations thereof, or the persons to whom he hath confessed such judgments, statutes, or recognizances, and for what fums and what confideration, fo that But

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that your orator cannot proceed at law for recovery of the said mortgaged premisses, the said P. J. threatening, in case your orator proceeds at law, to fet up the faid incumbrances, and the faid truftterm of 500 years in the faid L. M. All which they pretend are prior to your orator's faid mortgage; whereas your orator charges, that fuch conveyances, mortgages or other incumbrances (except the faid trust-term) are not prior to your orator's faid mortgage (if any fuch there be) or if any of them are prior to your orator's faid mortgage, the fame are voluntary and fraudulent, and made without any confideration really and truly paid, and fuch judgments, statutes and recognizances, were not for the payment of any just debt, but without any confideration, and voluntary, and contrived on purpose to defraud the just creditors of the said P. J. All which actings and doings are contrary to equity and good conscience, and tend to your orator's manifest wrong and injury. In tender consideration whereof, and forasmuch as your orator hath no means to discover what incumbrances there are upon the faid mortgaged premisses, or can foreclose the equity of redemption thereof, but in a court of equity where matters of this nature are properly cognizable, and the rather for that your orator's witnesses who could prove the truth of all and fingular the premisses, are either dead or gone into parts beyond the feas intirely unknown to your orator; To the cub therefore, that the faid P. J. and L. M. and their confederates (when discovered) may, upon their feveral and respective corporal oaths, true, full, and perfect answer make to all and fingular the premisses, as fully and particularly as if the same were herein again repeated and they interrogated, according to the best of their respective knowledge, information, or belief; and more particularly whether the faid P. J. was not, in or VOL. II. about R

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about the year 1727. or at some other and what time, and when, seised in fee, or of some other, and what estate of and in the manor, messuages, farms. lands, tenements, hereditaments, and premiffes herein beforementioned, or some and which of them, and whether he did not apply to your orator to bor. row the fum of - or some other, and what sum of money, and propose to secure it with interest as aforesaid, in the manner herein before-mentioned, or in any other, and what manner, and whether your orator did not accordingly advance, and lend to him the faid P. J. the faid fum of - and whether the faid P. J. and Q. his wife, did not execute such indentures of lease and release bearing date respectively the twentieth and twenty first days of April 1727. or fome other and what indentures of mortgage of the faid premisses to your orator, or of any other and what date, and whether the faid trust-term of 500 years was not thereby declared and agreed or how otherwise intended to be vested in the said L. M. in trust for your orator and his heirs, to attend and wait upon the inheritance of the faid premisses, or for any other, and what trust or purpole, and whether the faid P. J. did not again, some time in the year 1734. apply to your orator to borrow the further fum of - or fome other and what fum of money, and whether your orator did not advance and lend to the faid P. J. the faid fum of - and whether, for fecuring the repayment thereof with the interest as aforesaid, the said P. J. did not execute fuch bond of fuch date as is before fet forth, or some other and what bond of the same, or any other, and what date, and whether he did not execute fuch indorfement on the back of the faid release as is before set forth, bearing date the first of March 1734. or some other, and what indorsement or instrument in writing of the same, or such like date, tenor, purport or effect, and may admit the faid

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faid several indentures of lease and release dated the twentieth and twenty-first of April 1727, and the faid bond and indorsement made on the back of the faid release, dated the first day of March 1734. and the payment of the feveral confiderations thereof to be in the same manner they are herein before respectively fet forth, or may fet forth wherein they materially differ, and may fet forth whether the faid feveral fums of _____ and ____ or any part of either of them, hath at any time, and when, been paid by any person, and whom, to your orator, and may fet forth how much is now due to your orator for principal and interest on his said several fecurities, and may fet forth what incumbrances there are upon the faid mortgaged premisses, and when, and by whom the fame were charged or incumbred, and who claim the same respectively, and may fet forth the nature and kinds thereof, and whether the same are by absolute sale, mortgage, flatute-merchant, flatute-staple, judgments, recognizances, or how otherwise, and the dates, tenor, and short contents of such several incumbrances. and of the deeds, records or other instruments or writings treating or relating to the fame, and may let forth the respective considerations thereof, and when, where, and in whose presence such considerations were respectively paid, and whether in specie, bills, or how otherwise, and whether the faid incumbrances, or any, and which of them are now unpaid and unfatisfied, and how much money is now due on the same respectively, and that the said P.J. may be decreed to pay and fatisfy to your orator the faid feveral fums of — and — and all interest due and to grow due thereon after the respective rates aforesaid, by a short day to be appointed by this honourable court, together with your orator's costs; and in default thereof, that the faid P. J. and all persons claiming under him, may R 2

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be foreclosed of and from all equity of redemption or claim, in and to the faid mortgaged premiffes. and every part thereof, and may deliver over to your orator all deeds, charters, evidences, writings, muniments, court-rolls, rent-rolls, and minutes of courts whatfoever, relating to, or concerning the faid manor, meffuages, farms, lands, tenements, hereditaments and premisses; and that the said L M. may fet forth what right or title he hath or claimeth of and in the faid premisses, or any and what part thereof, and whether he is not a trufter for your orator, and why he refuses to let your orator bring an ejectment in his name; in order to recover possession of the said premisses and that the faid term of 500 years may be declared to be in trust for your orator and his heirs, to attend their heritance of the faid premisses, and that your ontor may have such further and other relief in the premisses, as to your Lordship shall seem proper, and shall be agreeable to equity and good conscience. May it please your Lordship, &c.

A bill brought by an infant by his next friend against executors for a legacy.

To the Right Honourable, &c.

Lordship your orator J. W. son of J. W. of D. in the county of K. mariner, an insant under the age of twenty-one years, to wit, of about the age of six years, by his said father and next friend, that J. W. of T. in the county of Y. Gent. being seised and possessed of a very considerable real and personal estate, did, on or about the sourch day of March in the year of our Lord 1742. duly make and publish his last will and testament in writing;

and thereby, amongst other things, devised and bequeathed as follows: [here cite the devise in the will) And that upon or foon after the death of the faid testator, to wit, on or about the the faid E. and W. W. (the executors of named in the will) duly proved the faid will in the prerogative court of York, and took upon themjelves the burthen and execution thereof; and by virtue thereof possessed themselves of all the said testator's real and personal estate, goods, chattels and effects, to the amount of ten thousand pounds and upwards: And your orator further sheweth unto your Lordship, that he hath by his said father and next friend, feveral times fince his faid legacy of three hundred pounds was due, applied to the faid E. and W. W. to have the same paid or secured for your orator's benefit; and your orator well hoped that the faid E. and W. W. would have complied therewith, without fuit, as in conscience and equity they ought to have done. But now so it is, may it please your Lordship, that the said E. and W. W. combining and confederating together to and with divers other persons, as yet to your orator unknown, whose names when discovered, your orator prays may be herein inferted as defendants, and they made parties hereto, with apt words to charge them, now to injure and oppress your orator, the said confederates respectively do now absolutely refuse to pay or fecure the payment of your orator's faid legacy, fometimes pretending that the faid testator did not make any fuch will; and at other times they admit that the faid teftator made fuch will, and that they have proved the fame, and possessed themselves of all his real and personal estate; but then they pretend that the same was very small and inconsiderable, and not near fufficient to pay and fatisfy his the faid testator's just debts, legacies and funeral expences, and that they have applied and disposed of R_3 the

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the fame towards fatisfaction thereof; and at the fame time the faid confederates do respectively refuse to set forth and discover what such real and personal estate was, or the particulars whereof the fame confifted, or the value thereof, or how much thereof they have fo applied, and to whom, and for what paid, or what is become thereof particularly; whereas your orator doth charge the truth to be that the faid testator died possessed of such real and personal estate to the full value aforesaid; and which was much more than would pay all his the faid tef. tator's just debts, legacies and funeral expences; and the faid confederates or one of them have posfessed and converted the same to their own uses, without making any fatisfaction to your orator for his faid legacy. All which actings, pretences and doings of the faid confederates are contrary to equity and good conscience, and tend to the manifest injury and oppression of your orator: In tender consideration whereof, and for that your orator is remediless in the premisses, at and by the strict rules of the common law, and is only relievable in a court of equity, where matters of this nature are properly cognizable; To the end therefore that the faid confederates may respectively, full, true, direct, and perfect answer make, upon their respective corporal oaths, according to the best of their respective knowledge, information and belief, to all and fingular the matters and charges aforefaid, as fully in every respect, as if the same were here again repeated and they thereunto particularly interrogated; and more especially that they may respectively set forth and discover, according to the best of their knowledge, remembrance, information and belief, whether the faid testator J. W. duly made and executed fuch last will and testament in writing, of fuch date, and to such purport and effect as aforefaid, and thereby bequeathed to your orator fuch legacy the

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fuch gacy egacy of three hundred pounds as aforefaid, or any ther, and what last will, of any other, and what late, and to any other, and what purport or effect particularly, and that they may produce the fame, or the probate thereof, to this honourable court, as often as there shall be occasion; and whether by uch will or any other, and what will, the faid tefator appointed any and what other executors by name, and when the faid testator died, and whether he revoked or altered the faid will before his death, and when, and before whom, and in what manper, and whether the faid confederates, or one, and which of them, proved the faid will, and when, and in what court, and that they may respectively fet forth whether your orator, by his faid father and next friend, hath not feveral times, fince his faid egacy was payable, applied to them to have the fame paid or secured to be paid for his benefit, or to that effect; and whether the faid confederates or one, and which of them, refused or neglected to comply with fuch your orator's requests, and for what reasons respectively, and whether such refusal is grounded upon the pretences herein before charged, or any, and which of them, or any other, and what pretences particularly, and that the faid confederates may admit affets of their faid testator come to their hands fufficient to fatisfy your orator's faid legacy, and subject thereto, or otherwise may fer forth a particular account of the real and personal estate, goods and effects of which the faid testator died possessed or intitled unto, and the particulars whereof the same consisted and the values thereof, and how much thereof they have applied in discharge of his the faid testator's debts, legacies and funeral expences, and to whom, and for what paid and what is become thereof particularly, and whether the faid testator did not die possessed of real and personal estates, goods and effects to the value of R 4 ten

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ten thousand pounds, or what other value, and whether the same was not much more than would pay all his just debts, legacies and funeral expences, and that they may also set forth a just and true account of all such debts and sums of money as were really due and owing, by and from their faid tef. tator, at the time of his death, and to whom by name, and on what fecurity or fecurities, and how, and on what account such debts were respectively contracted, and which of them now remain unpaid and unfatisfied; and that they may be compelled by a decree of this honourable court to pay your orator's faid legacy of three hundred pounds, and that the same may be placed out at interest for your orator's benefit, until your orator attains his age of twenty-one years, and that the faid three hundred pounds may then be paid him, and that, in the mean time, the interest thereof may be paid to your orator's faid father J. W. towards the maintenance of your orator; and that your orator may have fuch further and other relief in the premisses as the nature of this case shall require, and as to your Lordship shall feem meet. May it please your Lordship, &c.

The answer to the foregoing bill, submitting to pay the legacy under the indemnity of this court.

The joint and several answers of E. W. and W. W. Gent. defendants, to the bill of complaint of J. W. an infant, by J. W. his father and next friend, complainant,

THESE defendants now and at all times hereafter faving and referving to themselves all manner of benefit and advantage of exception to the

the manifold errors and insufficiencies in the complainant's faid bill contained, for answer thereto, or to fo much thereof as these defendants are advised is material for them to make answer unto, they anfwer and fay, they do admit that J. W. in the bill named, their late father deceased, did duly make and execute fuch last will and testament in writing of such date and to such purport and effect, and did thereby bequeath to the complainant J. W. such legacy of three hundred pounds in the words in the bill for that purpose mentioned, or in words to the like purport or effect; And these defendants further answering fay, they do admit that the faid teftator 7. W. did by fuch will appoint these defendants E. W. and W. W. executors thereof, and that the faid testator died on or about the fixth day of March 1742. without revoking or altering the faid will; and these defendants further answering say, that they do admit that they, these defendants, some time afterwards, to wit, about the month of April or May 1743. did duly prove the said will in the ecclefiaftical court of York, and did take upon themselves the burthen of the execution thereof, and now have the probate of the faid will in their custody ready to produce as this honourable court shall direct; and these defendants further answering do admit, that the faid complainant 7. W. by his faid father and next friend did feveral times apply to them the faid defendants (fince the faid legacy was payable,) to have the same paid or secured for the benefit of the faid complainant, which the defendants declined in regard the faid complainant is an infant, and therefore these defendants (as they were advised) could not be fafe in making such payments or in fecuring the faid legacy, but by the order and direction, and under the fanction of a decree of this honourable court; and these defendants further answering say, that by virtue of the faid

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faid will of the faid testator they did seise and posfeis themselves of the real and personal estate. goods, chattels and effects of the faid teftator, to a confiderable amount, and do admit that affets of their faid testator are come to their hands sufficient to fatisfy the complainant's faid legacy, and which affets they admit to be subject to the payment there. of, and are willing and defirous, and do hereby of. fer to pay the fame as this honourable court shall direct, being indemnified therein; and these defendants deny all unlawful combination or confederacy in the faid bill charged, without that, that there is any other matter or thing material or necessary for these defendants to make answer unto, and not herein or hereby well and fufficiently answered unto. confessed or avoided, traversed or denied, is true: All which, &c.

A bill in Chancery brought by an intestate's two daughters to call the widow to an account for the personal and real estate.

Lordship, your oratrixes M. D. and E. D. of — in the county of — spinsters, daughters and coheirs of W. D. late of — aforesaid, Esq; your oratrixes being infants under the age of twenty-one years, viz. your oratrix M. of the age of seventeen years or thereabouts, your oratrix E. of the age of sixteen years or thereabouts, by Sir S. A. of — in the parish of — , knight, their next friend, and the said W. D. your oratrix's late sather, was in his life-time, and at the time of his death, seised in see or of some other good estate of inheritance, of and in divers messuages, tenements and lands, with the appurtenances, in the city of — , and also of and in the manor of

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and of and in the messuages, lands, tenements and hereditaments thereunto belonging or thereto adjoining, with the rents, members and appurtenances thereunto belonging, and also of and in several manors, and divers lands, tenements and hereditaments, with the appurtenances, in and elsewhere in the kingdom of - of the yearly value in the whole of two thousand pounds and upwards, or other confiderable yearly value, and that the faid W. D. your oratrixes faid late father, was also in his life-time, and at the time of his death, possessed of, interested in, or intitled unto several goods and chattels real and personal, leases for years, and leases determinable on lives, ready monies, plate, houshold goods, a great stock of cattle, horses, implements of husbandry, and other personal estate, amounting in the whole to the furn of one thousand pounds or other considerable value; And your oratrixes further shew, that your oratrixes faid late father being fo feifed and possessed of and in such real and personal estate as aforefaid, on or about the ——— day of died intestate, leaving D. D. his widow and relict (your oratrixes mother) and your oratrixes his only daughters and coheirs, and of fuch ages as aforefaid; And your oratrixes further shew unto your Lordship, that on the death of your oratrixes said late father, the faid messuages, lands, tenements and premisses, whereof he died seised as aforesaid, descended, remained or came to your oratrixes as his daughters and coheirs, subject only to the right of dower or jointure of the faid D. D. your oratrixes faid mother, in and to the fame during her life; and by virtue of the statute for settling intestates estates, the clear personal estate of the said intestate your oratrixes said father, after debts and funeral charges paid and fatisfied, ought to be diftributed into three equal parts or shares, whereof the

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the faid D. D. your oratrixes faid mother is intitled to one third, and the other two third parts of the faid personal estate ought to be equally divided be. tween your oratrixes, being the only children of their faid father living at his death; And your oratrixes further shew, that on their said father's death the faid D. D. your oratrixes faid mother, as guardian to your oratrixes, or otherwise in their right or on their behalf, entered and possessed herself of all and fingular the faid real effate of your oratrixes faid father, and hath ever fince his death received and took the rents, fines, iffues and profits there. of, and also raised considerable sums of money by and out of the faid coal-pits within the premiss; and she the said D. D. your oratrixes said mother. also obtained letters of administration to be granted to her out of the prerogative court of Canterbury of the faid intestate your oratrixes faid father's perfonal estate, and by virtue thereof your oratrixes faid mother possessed herself of the said intestate's goods, chattels and personal estate of such great value as aforefaid, or other great value, and hath fold or disposed of the same, and raised great sums of money thereby, to two third parts or shares whereof your oratrixes are intitled as aforesaid; and the faid D. D. your oratrixes faid mother, having fo entered upon and possessed herself of your oratrixes faid father's real and personal estate as aforefaid, and thereout and thereby raised and received great and confiderable fums of money, your oratrixes well hoped their faid mother would have come to a fair and just account with your oratrixes touching the same, and have paid and answered to your oratrixes what should appear justly due to them in respect of the premisses, and that the money so due and belonging to your oratrixes, as aforefaid, should have been from time to time put out and improved for your oratrixes best benefit and advantage, as the

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the same ought in equity and justice to be: But now to it is, may it please your Lordship, that the faid D. D. your oratrixes mother, combining and confederating herself with divers persons unknown to your oratrixes, whose names when discovered your oratrixes pray may be made parties to this bill, with apt words to charge them; In order to defraud and defeat your oratrixes in the premifses, and having possessed herself of all the deeds and writings concerning your oratrixes faid father's estate, she the faid D. D. your oratrixes said mother (though in a dutiful manner requested thereto by your oratrixes) refuses to come to any account with your oratrixes touching the rents, iffues or profits of their faid father's real estate, or the particulars or values of the faid intestate's personal estate, or how she the said D. D. your oratrixes said mother hath administred or disposed of the same, and hath not as yet exhibited any inventory thereof (in the prerogative court of Canterbury as she ought to have done) your oratrixes faid mother fometimes pretending that your oratrixes being infants, she need not account with them during their minorities, and that your oratrixes faid father was at his death indebted to divers persons on mortgages, judgments, and other real fecurities, and that she your oratrixes faid mother hath paid confiderable fums of money in or towards the discharge or satisfaction thereof, and that she is intitled to her dower out of your oratrixes faid father's real estate, or otherwise to a jointure on the same or some part thereof, for payment of a yearly fum of money to her during her life, or to some such effect, and yet refuses to discover the fame; and your oratrixes faid mother also pretends that your oratrixes faid father's personal estate was not considerable, or not of such real value as aforesaid, and that your oratrixes said father was at his death indebted on bonds, fecurities, book-

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book-debts, debts by fimple contract and other wife, to feveral persons in considerable sums of mo. ney, in or towards satisfaction of which she hath ap. plied the same, and that if any surplus money did or should remain in her hands on her accounts due to your oratrixes in respect of their faid father's real and personal estates, that she cannot take upon her to put out fuch monies or any part thereof at interest, or otherwise improve the same, without the direction and decree of this honourable court for h doing; and your oratrixes faid mother refuses to come to an account with your oratrixes touching the premisses, or pay and dispose the monies due to your oratrixes thereon for your oratrixes benefit and advantage, as the ought in justice and equity to do. All which doings of the said D. D. &c. In tender, &c. To the end therefore that the faid D. D. your oratrixes faid mother may true and perfect answer make to all and fingular the premisse as fully as if the same were herein again particularly repeated and interrogated, and particularly may fet forth and discover what manors, messuages, lands, tenements or hereditaments your oratrixes faid father, or any in trust for him, was seised or possessed of at the death of your oratrixes faid father, and where the same lie, and may set forth a true rental or other yearly value thereof, and what rents, if fues or profits of the fame, she, or any person of persons by her order, privity or knowledge, of or for her use, have or hath had, received or taken fince the death of your oratrixes faid father; and may also set forth a particular account when and of whom she received the same, and what sum or sums of money she hath really and bona fide paid, difburfed or allowed out of or in respect of your oratrixes faid father's faid estate, or any and what parts thereof, and the times when, and the persons to whom, and for what and on what account the paid the.

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paid and allowed the same; and may also set forth and discover what estate, right, title or interest she your oratrixes faid mother hath or pretends to claim in or to your oratrixes faid father's estate, or any and what parts thereof, either for or upon account of her dower, jointure or otherwise, and by what deed, settlement or conveyance she hath or claims any jointure or other provision (if any such there be) out of the said estate and premisses, and when and upon what confideration really and bona fide fuch fettlement or conveyance (if any fuch there be) was made; and also what deeds, evidences and writings your oratrixes faid mother hath in her custody or power concerning the faid effate and premisses, and may discover and produce the same as this honourable court shall think fit and direct; and that your oratrixes faid mother may also set forth what personal estate your oratrixes said father died possessed of, interested in, or intitled unto, and may set forth a true and perfect inventory or account thereof, and the fair and true values of the fame, and what part thereof hath come to her hands, power or possesfion, and the particulars, kinds, and true values of such parts of the same as hath come to her hands, possession, power, privity or knowledge, or of any person or persons in trust for her, and how she hath administred and disposed of the same, and what parts thereof she hath fold, and to whom, and for how much, or at what values, and if the same were the full and true values thereof respectively, and what fum or fums of money your oratrixes faid mother hath at any time or times, and when, and of whom had or received, or raised thereby, and how the hath paid and applied the fame, or any and what parts thereof, and when and to whom, and for what and upon what account, and when such payments as she hath made out of, or in respect of the said personal estate for debts due from the intestate,

intestate, or otherwise, were all and every part there. of really and bona fide made by your oratrixes faid mother, and whether the monies by her brought in her account, to be paid out of or on account of the faid personal estate were really and bona fide paid by her accordingly, and what part of the faid personal estate is yet standing out and undisposed of, and the particulars, kinds, and true values thereof; and that your oratrixes faid mother may come to a fair and just account with your oratrixes as well touching their faid father's real and personal estate, and what is due and of right belonging to your oratrixes out of the same respectively, and that the clear surplus of the monies on fuch accounts due and belonging to your oratrixes, may be applied and disposed of for your oratrixes benefit and advantage, by putting out the same at interest, or otherwise improved a this honourable court shall think fit, and your ontrixes be relieved in all and fingular the premisses according to equity and good conscience. May it, &.

A bill to discover a title, and set aside a recovery and will suffered and made by a lunatick, by one coheiress against another, and that a mortgage made by the defendant may affect her part only, and to be relieved with regard to partnership debt, the partnership being df-Solved.

To the Right Honourable, &c.

JUMBLY complaining shew unto you Lordship your orator and oratrix J. S. of the parish of — in the county of — , and E his wife, which faid E. was one of the daughter and coheirs of C. W. late of - in the county of - widow deceased, and likewise one of the sister

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nd coheirs of J. W. late of - aforefaid, genleman, deceased, That the said C. W. being seised nd possessed of divers lands, tenements and herediaments in fee-simple, situate, lying and being at aforesaid, of the yearly value of —, or hereabouts; and being minded to make some proisson for her family, she by some deed or instruent duly executed by her, conveyed and fettled the ame in the manner following, to wit, To herself or life without impeachment of waste, and from nd after her decease to the said J. her eldest son, nd the heirs male of his body; and from and after is decease without issue male, to T. W. her other on, and the heirs male of his body, and for default fiffue male of the faid T. then to her own right eirs, as in and by the faid deed or instrument of ttlement, had your orator and oratrix the fame to roduce, and to which for greater certainty therein our orator and oratrix crave leave to refer, doth nore fully and at large appear; And your orator nd oratrix further shew unto your Lordship, that ome short time after she had executed the said setlement as aforesaid, to wit, in the year 1711. she he faid C. W. departed this life leaving iffue the faid and T. W. her faid two fons and five daughters, amely, A. M. your oratrix E. C. and S. and that te said 7. being tenant in tail of the said premisses, ethereupon entered upon the fame, and took poffion thereof, and held and enjoyed the same home othe time of his death; And your orator and oraix further shew unto your Lordship, that the said .W. and S. W. respectively died unmarried in the fe time of the said 7. and that the said 7. departed his life on or about the twenty-second day of Novem-# 1739. unmarried and without any issue of his boy, and that he did no act in his life-time whereby lesaid estate-tail became docked, or the remainders the faid fettlement barred, and that by means Vol. II. thereof

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thereof the faid premisses on his death by the faid settlement became vested in the said A. M. your oratrix and C. the four surviving daughters of the faid C.W. as her right heirs, and ought to be held and enjoyed in copartnership by them; And your orator and oratrix further shew unto your Lordship, that immediately upon the death of the faid J. W. the faid A. your oratrix's faid eldest fister, under pre tence that she was thereunto privileged by prioring of birth, entered into and took possession of the said premisses, and hath enjoyed the same, and taken the rents and profits thereof to her own use ever fince And your orator and oratrix further shew unto you Lordship, that before your orator's intermarriage with the said E. his said wife, a partnership in trad had been entered into and carried on for seven year by and between the faid A. and his faid wife, the during the faid partnership the sum of ---- was bor rowed of Mrs. S. W. of —— in the county of — a defendant herein after named on the faid partner ship account; That upon his concluding the treat ship of marriage with the faid E. the faid A. agreed the she would retain the said partnership effects to he faid own use, and in consideration thereof would tak there the payment of the faid — to the faid Mrs. W your on herfelf, and would alone become responsible bugh her for the same, and that in consequence thereo please char

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charge or diffolution of the faid partnership between the faid A. and your oratrix, the faid partners were possessed of a very considerable stock in trade, and divers confiderable debts were standing out and owing from several persons to the said partnership, amounting to a very great value, all or the greatest part whereof the said A. hath either caused to be got in for her use, or hath personally received the same; and your orator being intitled in the right of his faid wife to one fourth or quarter part of the faid premisses, and also to a moiety of the said partnership effects as aforefaid, he hath often applied to the faid A.W. and in a friendly manner intreated her to let him into the possession thereof, and to account with him for the rents and profits thereof from the death of the faid J. W. and to pay the faid debt so due to the faid Mrs. W. as aforefaid, or otherwise to deliver up the faid instrument or writing to your orator, that he may thereby be inabled to do himself right in case he should be sued for the same, or to account with him for a mojety of the faid partnerhip effects; and your orator well hoped, that the faid A. knowing that your orator was well intitled thereunto as aforesaid, would have complied with your orator's request, as in justice and equity she ought to have done: But now to it is, may it please your Lordship, that the said A. W. combinthereo writing ing and confederating herself to and with the said S. the sa W. and to and with diverse other persons, at prethe la W. and to and with diverse other persons, at preng you fent unknown to your orator and oratrix, whose the sa names, when discovered, your orator and oratrix ng fra humbly pray may be inserted in this their bill of into h complaint, with apt words to charge them as parame, it is hereunto, now to defeat your orator and oratrix tain to of the said sourth or quarter part of the said prenot the misses so come to your oratrix as aforesaid; and to said due and owing to the said S. W. she the said A. prechar char S 2

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tends, and gives out in speeches, that she is well in. titled to the whole premisses, by virtue of some devife or general words in the will of her faid mother, and that her faid mother C. W. never made any fuch fettlement thereof, as is herein before fet forth; at other times she admits, that the faid C. W. did duly execute fuch fettlement; and that the faid 7. upon her death, entered upon the faid premisses, and enioved the same as tenant in tail thereof, and that he, by fine and recovery levied and fuffered by him, docked the faid entail, and barred the faid remainders, and by indentures leading the respective uses thereof had declared the same to be to the use of himself and his heirs for ever, and that being by means thereof feifed of an absolute estate in feesimple in the faid premisses, he, by his last will and testament in writing, duly executed, and bearing date on or about the twenty-fixth day of August 1725. gave and bequeathed unto the faid A. the fum and to all his other fifters the fum of a-piece, and to one Mrs. C. S. the fum of devised the remainder of his estate, whether real or personal, unto the said A. and her heirs for ever, and that the therefore claims the faid whole premiffer, under the will of her said brother J. W. who she is fills had full power to dispose thereof as he though proper; whereas your orator and oratrix charge, and doubt not but they shall be able to prove the fame to be true, that the faid J. W. was utterly incapable of levying any fine, or luffering any recovery in order to dock the faid intail, and bar the faid remainders to limited by the faid fettlement as aforesaid, of of making any will to dispose of his real estate, i any such he was intitled to, other than as aforesaid he the faid 7. W. having been a lunatick withou any lucid interval from his age of twelve years and had t continued fo to the time of his death; and you orator and oratrix charge, that if it shall appear tha

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the faid J. W. had an estate in fee-simple in the said premisses, which your orator and oratrix by no means admit, yet that for the reason last mentioned, he could by no means lawfully dispose thereof, either by will or otherwise, but the same are descended and come to his faid four fifters A. M. E. and C. as his heirs at law; and that your orator in the right of his faid wife is thereby become intitled unto one fourth or quarter part thereof, and ought to be put in poffession of the same, and to have an account of the rents and profits thereof from the death of the faid 7. W. her said brother; at other times she the said A denies that any fum of money what soever was borrowed of the faid S. W. by her and your oratrix E. on the faid partnership account, or that any infrument or writing was executed by her upon your orator and oratrix's faid intermarriage, to indemnify your orator therefrom, but infifts that the faid fum of ---- was the fole and feparate debt of your oratrix E. and borrowed for her own use independent of the faid partnership, and being in possession of the faid instrument or writing, sets your orator at defiance as to any remedy he can have against her for the same, or any part thereof; and the said S. W. knowing that the said A. conceals and secretes the said instrument or writing, and confederating with her how to oppress your orator therein, threa-tens to sue your orator for the same, and to compel main of admits the fame to be the fole and proper debt of the faid A. although your oratrix became a joint fecurity with her for the same, or otherwise that the same the faid was borrowed on the faid partnership account, and that she by virtue of the said agreement between her and your orator, and for the considerations aforesaid, and taken the same upon herself, and hath often the said A. to be very good, and that she should

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rely fingly upon her for the payment of the faid mo. ney, or to that or the like effect; at other times the faid A pretends, that the faid stock and effects of the faid partnership was very trifling and inconsiderable at the time that the faid partnership was so discharged or diffolved as aforefaid, and not an equivalent for her discharging or indemnifying your orator, from paying his share and proportion of the said debt, but denies that your orator in right of his faid wife, is intitled to a moiety or any other part thereof; whereas your orator and oratrix firitly charge, that the faid partnership effects were of a considerable value, and the faid A. very well knew the faid agreement to be a very beneficial one on her part, and hath often promised your orator and oratrix to perform the same, or to account with your orator for a moiety of the faid partnership effects; at other times the faid S. W. pretends and infifts, that the has fome mortgage or other incumbrance on the faid premiffer at - aforesaid, but refuses to discover to your orator and oratrix by whom the fame was made or done, and for what fum or fums of money really and bona fide advanced and lent by her thereon; whereas your orator and oratrix charge, that if any fuch mortgage shall appear to be made or done, the same was made and done by the faid A. fo'ely fince the death of the faid 7. and can only affect her interest in the said premiffes. All which actings, doings and pretences of the faid confederates are contrary to equity and good conscience, and tend most apparently to your orator and oratrix's great injury and wrong: In tender tongideration whereof, and forasmuch as your orator and oratrix are altogether remediless in the said premisses at common law, and cannot be relieved therein but by the favourable aid and affiftance of court of equity, where matters of fraud and of this nature are properly to be discovered and inquired into, and the rather, for that your orator and ora trix

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trix's witnesses who would prove the truth of the faid premisses, are either dead or gone into parts remote and beyond the feas, and unknown to your orator and oratrix, by means whereof your orator and oratrix are deprived of the benefit of their testimonies: To the end therefore, that the faid A. W. and S. W. and the rest of the confederates, when discovered, may true, distinct and perfect answer respectively make to all and singular the matters and things herein and hereby charged, and that in as full and ample a manner as if the fame were here again particularly repeated and interrogated; and that the faid A. W. in particular may fet forth and discover whether the faid C. W. your oratrix's faid late mother, was not seised in fee-simple, or how otherwise, of the faid premisses at - aforesaid of the yearly value of - or thereabouts, or of what other yearly value, and whether she did not make such settlement thereof as is herein before fet forth, or any other and what settlement thereof, and of what date the same is, and of what kind and nature, and between what parties and by whom executed, and what are the names of the fubscribing witnesses thereto, and in whose custody or power the same now is or late was, and when and whether the faid C. W. is not fince dead, and when she died, and what iffue she left behind her at the time of her death, and whether immediately upon her death the faid J. W. her eldest son as tenant in tail under the faid fettlement, or how otherwise, did not enter upon the faid premisses, or any and what part thereof, and take possession thereof, and hold and enjoy the same to the time of his death; and whether the faid T. W. and S. W. did not respectively die in the life-time of the faid J. unmarried, and whether the faid 7. did not, at or about his age of twelve years, or at or about any other and what age, become a lunatick without any lucid interval, and whether he

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was at any time, and when afterwards, capable of levying any fine, or fuffering any recovery to dock the faid intail and bar the faid remainders in the faid fettlement, and when and whether he was of found mind and memory at the time when he made and executed his faid will, and how long he had been fo before the making and execution thereof, and whe. ther he continued to be so any time afterwards and how long, and by whose advice was the same made, and where, at what place, and about what time was fuch will made and executed, and who drew or prepared fuch will, and where did fuch person who drew or prepared the faid will, and the persons that were witnesses thereto at the time of drawing or preparing the faid J. W's will and execution thereof, respectively live or reside, and where do such persons how live, lodge, refide, or may be met with or heard of, and whether the faid J. W. is not fince dead unmarried, and without iffue, and whether the faid A. M. your oratrix E. and C. are not the only daughters and right heirs of the faid C. W. and the only fifters and heirs at law of the faid J. W. and whether upon the death of the faid 7. and how long after, or when otherwise, she the said A. did not divers enter upon the said premisses, and take possession severa thereof, and receive the rents and profits thereof, she has and why, and whether she doth not now continue in the the reception thereof, and what is the clear yearly haid produce thereof, and whether your orator in the and the said of the right of his faid wife, is not now become intitled to one full fourth or quarter part of the faid premisses, borro and to a full fourth or quarter part of the rents and ble a and to a full fourth or quarter part of the rents and profits thereof from the death of the faid J. W. or your ora-how otherwise, and whether previous to your ora-tor's faid intermarriage with his said wise, and how the stong a partnership in trade was not entred into and know carried on by and between the faid A. and your ora-lid is tor's faid wife, and during the faid partnership the faid

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aid fum of - was not borrowed of the faid other defendant Mrs. S. W. on the faid partnership account, or how otherwise, and by whom and why, whether upon the faid marriage being concluded beween your orator and his wife, it was not agreed hat the faid A. should retain the faid whole partnership effects to her own use, and that in consideraion thereof she should take the payment of the said fum of - on herself, and alone become responfible to the faid S. W. for the fame, and whether in consequence thereof, an instrument or writing was the faid partnership, and for the said A's indemni-fying your orator from the said sum of ——, or to what other purport and effect, and of what date, and in whose custody or power the same now is, or ate was, and when and how long it was since she aft faw the fame, and whether she doth not conceal and secrete the same, and why, and whether at the time of the said discharge or dissolution of the said partnership as aforesaid the said partners were not consessed of a very considerable stock in trade, and the confideration herein before mentioned the faid A. had taken the same upon herself, and that she knew the faid A's circumstances to be very good, and should rely singly upon her for the payment of the faid debt, or to that or the like effect; and whether she hath not fince threatned to sue your orator for the same, and to compel him to make payment thereof, and why and whether she hath any mortgage, or other and what incumbrance on the faid premiffes at - aforefaid, and by whom the same was made or done, and when and for what fum or fums of money really and bona fide advanced and lent by her, and to whom; and that the faid A. may produce the faid fettlement, or fet forth the fame in bæc verba in her answer hereunto, and that the faid will of the faid 7. W. may be declared to be null and void, and absolutely set aside as against your orator and oratrix, and your orator be put into the possession of one full fourth or quarter part of the faid premisses in right of his faid wife, and that the faid A. may account with your orator and oratrix, and pay them one full fourth or quarter part of the rents and profits of the faid premisses so received by her as aforefaid, and may likewife produce and deliver up to your orator the faid instrument and writing so entered into between them as aforefaid, and further indemnify and fave harmless your orator from the faid debt of - fo owing to the faid S. W. as aforefaid, or may otherwise account with your orator for a moiety, of the faid partnership effects, and pay and deliver over the fame to your orator, and that the faid mortgage or other incumbrance so made or done by the faid A. W. to the faid S. W. may be declared to affect the interest only of the said A. in the said premisses, and that the faid S. W. may be restrained from proceeding at law against your orator for recovery of her faid debt by injunction of this honourable court, and that

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that your orator and oratrix may be further and otherwise relieved in the said premisses according to equity and good conscience, and as the nature and circumstances of their case shall require. May it please your Lordship, &c.

A bill in order to establish the custom of a manor.

To the Right Honourable, &c.

HUMBLY complaining, shew unto your Lordship, your orator and oratrixes W. W. of, &c. in the county of - Esq; and the honourable C. W. his wife, and the honourable M. G. spinster, that your oratrixes C. W and M. G. are aunts and coheirs at law of the Right Honourable C. late Lord P. deceased, who at the time of his death (which happened on or about the twenty-fecond day of February which was in the year 1738.) was feifed in fee, of and in the barony of ____ and the manor of ——— within the country of ———, and the rights, members and appurtenances belonging thereto, that upon the decease of the said late Lord P. (who died without iffue male) the faid premiffes descended to, and became vested in your oratrixes in fee as aunts and coheirs at law of the faid Lord P. And your orator W. W. in right of your oratrix C. his wife, and your oratrix M. G. now are, and ever since the decease of the said late Lord P. have been seised in fee, and in actual possession of the said barony and manor, and all the rights, members and appurtenances belonging to the fame; and your orator and oratrixes further shew, that there are, and time out of mind have been, divers antient cuftomary meffuages, lands and tenements within and parcel of the faid manors, and held of the fame, and descendible from ancestor to heir, according to the custom

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custom of the said manor, and holden thereof under the payment to the Lord or Lady, for the time being, of the faid manor, of certain antient yearly rents for the faid customary messuages and tenements respectively, and of a fine upon every grant thereof, made by the Lord or Lady for the time being, of the faid manor, to the tenants thereof respectively, and under payment of certain heriots, and doing fuit and fervice at the courts of the faid manor, according to the custom thereof; and your orator and oratrixes further shew, that the said customary mesfuages, lands and tenements respectively, are, and time out of mind, by the usage and custom of the faid manor, have been grantable and granted by the Lord or Lady of the faid manor for the time being, by deed executed by him or her, and by admittance thereupon made or granted by fuch Lord or Lady, or his or her steward for the time being, of the faid manor; and more particularly your orator and oratrixes charge, that amongst other customary tenements, parcel and held of the faid manor as aforefaid, there are, and time out of mind have been an antient meffuage, and two hundred acres of customary land called K. fituate and lying within the faid manor, which are, and time out of mind have been a customary messuage, and lands, and parcel and holden of the faid manor as aforefaid, according to the custom thereof, and granted and grantable as aforefaid; and that the same are now held by T. H. of D. in the county of C. and T. his wife, in her right, by and under fuch customary deed and admittance as aforefaid, according to the antient and laudable custom of tenant-right within the said manor; and your orator and oratrixes expresly charge, that the faid deed and admittance now are in the cultody or power of the faid T. H. and T. his wife, or one of them; and that by the antient usage and cuftom, time out of mind used and obtained within the faid

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aid manor, no customary tenant of the said customary estate called K. or of any other of the customary lands, parcel and held of the faid manor as aforefaid. has or have any right or title to fell or cut down any imber growing thereon, fave and except for the neceffary repairs of their respective customary tenements, and for necessary botes to be used upon their respective customary tenements; and that only after such timber has been assigned and set out for that purpose by the bailiff or agent for the time being, of the then Lord or Lady of the faid manor; and that agreeable to the faid last mentioned custom, and in confirmation thereof by the faid deed or indenture of the faid K. under which and the faid admittance the fame is now held as aforefaid, it is covenanted by the tenant or grantee therein named, for himself, his heirs and affigns, to and with the Lord of the hid manor, his heirs and affigns, that fuch grantee, his heirs or affigns should not, nor would fall or cut down any timber on the faid customary lands called K. fo granted to him as aforefaid, or any part thereof, fave for fuch necessary repairs and botes as aforeaid, by and after such assignment thereof to be made to him as aforefaid, as by the faid deed and admittance, when produced to this honourable court, and to which your orator and oratrixes crave leave to refer, relation being thereunto respectively had, may more fully appear: And your orator and oratrixes further shew, that there now is a great quantity of timber, and till lately, as herein after is mentioned, was a much greater quantity thereof growing or standing on the said customary lands called K. and that all fuch timber was and is respectively the property of and belongs to your orator and oratrixes as parcel of the freehold and inheritance of the faid land whereon fuch timber grew or flood, or now grows, the freehold and fee of which lands are refled in your orator and oratrixes, as Lord and Ladies

Ladies of the faid manor aforesaid : But neberthi less to it is, may it please your Lordship, that the faid T. H. and T. his wife having entered into combination and confederacy with divers other perfons, as yet unknown to your orator and oratrixes, whole names when discovered, your orator and oratrixes pray leave to infert in this their bill of complaint with apt matter to charge them and every of them as defendants hereto; with intent to injure vous orator and oratrixes, and convert all the faid timber to the use of the said T. H. and T. his wife; he the faid T. H. did, in or about the month of July last, cause fifty-six oak timber trees of considerable value to be felled and cut down in and upon the faid cuf tomary lands called K. without any licence or affign ment by or from your orator or oratrixes, or by any bailiff or agent of theirs, or any of them for fo do ing; whereas your orator and oratrixes exprelly charge, that by the custom of the said manor, and also by the said deed or indenture under which the faid customary lands called K. are now held as afore faid, the tenants and occupiers of the faid customary lands called K. are expresly restrained from cutting felling or taking any timber or wood in or upon the fame, except for necessary repairs, and botes to be affigned them respectively as aforesaid; and you orator and oratrixes also charge, that the faid timber and wood fo cut down by the faid T. H. or his order as aforefaid, was not, nor is necessary to be used in or for any repairs of or about the houses and buildings, or any of them, on the faid customary tenement called K. or for necessary botes; and that at the time the faid timber or wood was fo cut down as aforefaid, there was a confiderable quantity of timber and wood lying upon the faid lands and estate called K. which had been cut down by the faid T. H. and T. his wife, or one of them, or their or one of their order, about three or four years

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ago, and which was more than fufficient for all the repairs of the buildings upon the faid premisses, and for necessary botes to be used upon the same; and that there was not then, nor now is any occasion, on account of any repairs of or about the faid premifles called K. or for necessary botes to be used upon the fame premisses, to cut down any more or other timber or wood upon the same; notwithflanding which, the faid T. H. not only refuses to make your orator and oratrixes fatisfaction for the faid timber and wood fo cut down by him as aforefaid (altho' feveral times applied to for that purpose;) and your orator and oratrixes have offered, and do hereby offer to waive all penalties and forfeitures for cutting the same; but the said T. H. and T. his wife give out, that they will cut down all fuch other timber and wood upon the faid premisses as they shall think fit. In consideration whereof, and forasmuch as your orator and oratrixes are remediless in the premisses, and cannot restrain the said T. H. and T. his wife from committing farther waste or spoils in the timber growing on the faid lands and estate called K. nor can have a discovery of the quantities and value of the faid timber fo cut down as aforefaid, and compel the faid T. H. to make your orator and oratrixes fatisfaction for the same, without the aid and asfistance of this honourable court; To the end therefore that the said T. H. and T. his wife may, and their confederates as discovered, upon their respective oaths, full, true and perfect answer make to the best of their respective knowledge, information and belief,) to all and fingular the matters and things herein before charged, as fully and particularly as if the same, and every of them, were here particularly repeated and they thereunto interrogated; and more especially that the said T. H. and T. his wife may fet forth, whether your orator

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and oratrixes are not Lord and Ladies or owners of the faid barony of L. and of the faid manor of N. herein beforementioned, and whether, as fuch. they are not feifed in fee or otherwise, and how, of and intitled to the freehold and foil of all the faid customary lands called K. and all timber and wood flanding or growing thereon, and whether the fame are not now holden by the faid T. H. and T. his wife, in her right or otherwife; and how, by and under fuch deed and admittance as herein before mentioned, or by or under what other right or title, and whether fuch covenant or reftriction concerning the cutting or felling of timber and wood as herein before is mentioned, is not contained therein, and whether they have any, and what right to cut down any, and what timber or wood, in or upon the faid lands fo held by them, except for the necessary repairs of the houses and buildings thereon, and for necessary botes, and that by and with the licence and affignment of the Lord or Lords of the faid manor, or their bailiff or agent for the time being; and whether there is not a confiderable, or some and what quantity of timber standing and growing upon the faid customary estate called K, and of what value the fame is, and whether the fole property thereof is not in your orator and oratrixes as aforefaid, and whether he the faid T. H. and T. his wife, has or have, or pretend to have any and what right or title thereto, or to any, and what part thereof; and that they may fet forth the deed and admittance, or other and what title they hold the faid lands and estate called K. and whether the person to whom the fame was granted, was not by fuch deed restrained from cutting or felling any timber upon the faid customary estate (fave as aforesaid;) and that the faid T. H. and T. his wife may fet forth, whether they, or one and which of them, did not in or about the month of July latt, or at some, and what other time iers

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time or times, cause fifty fix oak-trees, or some other, and what number of oak or other trees, and of how many years growth, to be cut down and fallen in and upon the faid lands called K. and whether the same were not so cut or fallen without the licence or affignment of your orator and pratrixes. or any agent or bailiff of theirs, and without any affignment of any such bailiff or agent; and by what right, title, power or authority the fame were fo cut down or fallen; and that they may fet forth the respective dimensions and values of each and every of the faid trees to cut down by them or either of them, or by their or either of their order as aforefaid; and that he the faid T. H. may account and make fatisfaction to your orator and oratrixes for the same; and that the said T. H. and T. his wife. may be restrained by the order or injunction of this honourable court from felling or cutting down any timber or wood for the time to come in or upon the faid lands held by them of the faid manor as aforefaid, without the affignment of your orator and oratrixes, or their bailiff or agent; and that your orator and oratrixes may have such further and other relief in the premisses, as the nature of their ale requires, and as shall be agreeable to equity and good conscience. May it please your Lordhip, &c.

Abill to open an account settled by the intestate, for fraud and duress.

To the Right Honourable, &c.

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administrator of all and every the goods and chat tels, rights and credits which were the goods and chattels, rights and credits of the faid C. S. at the That fome time in the year of time of his death. our Lord - T. C. of London, merchant, and L. M. of the same place, merchant, both trading to - in - and being willing and desiron to unite, did come to a treaty with each other to unite their stock in the faid trade to the faid and other parts; and finding it necessary to flat both their accounts, in order to the adjusting the terms of the then intended union, they did joint and feverally appoint and authorife their agents t examine and flate the accounts of the feveral mer chants in — with whom the faid T. C. and I M. or either of them had had any dealings; an thereupon the faid T. C. and L. M. did duly an fufficiently authorise 7. G. S. C. E. B. and 7. R. concerned as agents for the faid T. C. and L. M. residing at - asoresaid, to state and settle the accounts then depending between the faid I. (and L. M. and the faid C. S. And the faid T. and L. M. by their faid agents duly authorifed aforefaid, some time in the faid year, came to a account with the faid C. S. touching all dealings the had been between them, as well concerning mo ney borrowed and received by the faid T. C. and A M. or either of them, of and from the faid S. and goods and merchandizes of his that had bee fold and delivered by him to them or one of them as concerning business done by him for them, an at their request, and concerning all other matters account then depending between them; and upo that account the faid T. C. and L. M. were foun justly and truly indebted unto the said C. S. in the fum of --- being foreign money of the value of --- each; and thereupon the faid agents, the being fully authorifed by them the faid T. C. an L. M

L. M. in this behalf, did for fecuring the repayment of the faid fum of - give unto the faid C. S. the four following bonds, all duly figned, fealed and executed by the faid 7. G. S. C. E. B. and 7. R. and which has always been used there and esteemed to be binding to the said T. C. and L. M. fince their union, bearing date on or about the — day of — in the year of our Lord that is to fay, one bond by which the faid agents did acknowledge to have borrowed and received of one V. V. the fum of —— current money of that place, which faid fum, with the interest thereof, after the rate of --- by the hundred, by the month of thirty days, they the faid agents did oblige themfelves, their heirs, executors and administrators, for and on behalf of the faid T. C. and L. M. to repay on demand; and the other bond of like form, whereby the faid agents did acknowledge to have borrowed and received of one B. G. the fum of of like money, which fum, with interest thereof after the fame rate, they did oblige themselves, their heirs, executors and administrators, for and on behalf of the faid T. C. and L. M. to repay on demand; and one other bond of like form, whereby the faid agents did acknowledge to have borrowed and received of one S. N. the fum --of like money, which fum, with the interest thereof after the same rate, they did oblige themselves, their heirs, executors and administrators, for and on behalf of the faid T. C. and L. M. to repay on demand; and one other bond of like form, whereby the faid agents did acknowledge to have borrowed and received of one C. B. the fum of — of like money, which fum, with the interest thereof after the same rate, they did oblige themselves, their heirs, executors and administrators, for and on behalf of the faid T. C. and L. M. to repay on demand, as in and by the faid four bonds, had your orators the T 2

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fame to produce, might appear; And your orators further shew, that the faid V. V. B. G. S. M. and C. B. were merely trustees or agents for the faid C. S. and that the faid bonds were given to him in their names, and for his use only, it being usual in - in the dominions of - to take fecurities for money in fictitious names, or in the names of trustees, or persons deceased, in order to conceal their substance from the governors of those provinces, and to prevent arbitrary taxes and impofitions from being imposed upon them, and that they did f verally and respectively indorse and asfign the faid bonds to the faid C. S. or the property and right of the faid bonds, and every of them, and the money secured was thereby or otherwise le gally and rightfully vefted in him the faid C. S. according to the laws of the country and nature and method of transacting such affairs; and your orators expresly charge, that the faid C. S. was the proprietor of the faid bonds, and admitted and acknowledged to be fuch as well by the faid T.C. and L. M. as by the faid J. G. S. C. R. B. and 7. R. and other the faid T. C. and L. M.'s agents in — and feveral confiderable fums were actually paid by them to the faid C. S. upon account of the faid bonds, or the interest thereof; and you orators charge, that the faid rate of interest is a fair usual and lawful interest for the forbearance of money in that country. And the usual and constant method of stating accounts of interest in that coun try is, at the end of every year to compute the interest then due as principal, and compute interest upon the same from the end of such year. And your orators further charge, that the faid V. V. B. G. S. N. and C. B. are all of them persons resid ing in - out of the dominions of his Majefty and out of the jurisdiction and the reach of the process of this honourable court, and in parts unknown

to your orators. And your orators further shew, that the faid bonds fo given were true and proper evidences of a debt due from the said T. C. and 1. M. to the faid C. S. and a charge upon them the faid T. C. and L. M. and fuch as were usually given by their direction and authority for the securing of their just debts, and generally submitted to in other cases; And that they were actually given to the said C. S. upon account of fo much money really and juffly due from the faid T. C. and L. M. as aforefaid, upon the stating of the said account. And your orators further shew, that some time after the flating of the faid accounts, and giving the faid bonds as aforesaid, the said T. C. and L. M. united their faid stocks, and were united into one company, and by virtue of their union, and otherwise, the faid T. C. and L. M. are chargeable with and ought to pay all their and each of their just debts and demands, and particularly the monies secured or mentioned to be fecured by the faid bonds fo as aforesaid given to the said C. S. And the said T. C. and L. M. did actually allow in account to the said C. S. interest after the rate aforesaid, for the faid fum of —, mentioned in the faid bonds until the month of — or — in the year — ... And your orators shew, that on or about the day of — in the year —, 7. B. and 7. H. being fervants and agents of the faid T. C. and L. M. and acting on their behalf and by their direction, fent for the said C. S. to come to them on board a ship called the ——, then lying at —— bar in , under pretence to flate his accounts as they then flood with the faid T. C. and L. M. your orato's expresly charge, that at that time the principal monies due to the faid C. S. upon the laid bonds, together with the interest thereof after the rate aforefaid (which was the fame rate of interest as the said T. C. and L. M. always charged T 3 tile

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the faid C. S. with for fuch money and goods as they had at any time advanced to him) amounting to -- and discounting thereout all such monies and the full value of all fuch goods as he had received from or upon account of the faid T. C. and L. M. with compound interest as aforesaid, and all demands whatfoever which they had upon him. there would have remained due from the faid T. C. and L. M. to the faid C. S. at that time the fum of --- and upwards, upon the ballance of all accounts; And your orators further shew, that instead of stating accounts with the said C. S. in a fair and regular manner, as he hoped they would have done. they the faid 7. B. and 7. F. took him the faid C. S. into custody, and confined him on board the faid thip, without his receiving any meat or drink, or having any refreshment or relief of nature whatsoever for the space of -- or for some other long fpace of time; he the faid C. S. being, as they well knew, forbidden, by the religion which he professed and was of, to take any refreshment or relieve nature in any manner whatfoever elsewhere than upon dry land; and the faid 7. B. and 7. F. or one of them, during the faid time, used great cruelty towards him the faid C. S. frequently threatning to take away his life, unless he would comply with their proposals, which were to fign an agreement to deliver up his faid bonds, and to give fome release or discharge for the money due to him thereupon, upon his receiving —— and being discharged from a debt of —— due from him to the faid T. C. and L. M. which arose from the money and goods which he had received upon account of the faid T. C. and L. M. and compound interest for the fame after the rate aforesaid; but the said C. S. did for a long time and with great firmness refuse to comply with fuch unjust proposals, and offered to flate his accounts with the faid T. C. and L. M. upon ds as

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upon a fair and reasonable foot, and allow all their buft demands and objections; but the faid agents of the faid T. C. and L. M. or one of them, arbitrarily infifted upon defalking the greatest part of what was due upon the faid bonds, without giving any reason for the same, threatning the said C. S. that if he would not comply with their demands, they would carry him to --- where he should settle his accounts, meaning that he should settle his accounts in prison; and your orators farther shew, that the find C. S. being reduced to the greatest extremity by the aforefaid cruel confinement, and having no other way of obtaining a release from the same, he was thereby forced and prevailed upon to fign fome instrument, purporting to be an agreement to the effect before mentioned; upon which he was permitted to go on shore, and within a few days afterwards he was again applied to by the faid 7. H. and J. B. and others, the servants and agents of the faid T. C. and L. M. and required to perform the faid agreement, and deliver up his faid bonds, upon their discharging him in the name and on the behalf of the faid T. C. and L. M. from the faid demands of —— but the faid pretended agreement having been fo unduly extorted from him, he the faid C. S. at first absolutely refused to comply therewith; upon which the faid fervants and agents of the faid T. C. and L. M. again renewed their threats and menaces, and not only threatned violence to his person, but also threatned to complain of him to who was an officer of great power and authority under the ——— and use the influence and interest of the said T. C. and L. M. against him, and also threatned, that they would not only insist upon the faid writing of agreement, fo unjustly obtained, in bar of any claim upon the faid bonds, and that the faid T. C. and L. M. would never pay any money upon account of the faid bonds, but T 4 would

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would also prosecute him the said C. S. upon their demands against him; and he the said C. S. at first refused to come to the said J. H. and the other servants and agents of the faid T. C. and L. M. who fent for him for the purposes afore aid, representing to them, that he was afraid to come to them, left he should be treated there as he had been on board the faid ship, which he expla ned to be by putting him under confinement, and terrifying him by threatning to take away his life; upon which the faid 7. H. acquainted the faid T. C. and L. M. with this answer of the said C. S. who ther upon thought fit to give some affurances to the said C. S. by the faid 7. H. that he should not have any force offered to him, but should be treated in a friendly manner; and upon such assurances the said C. S. came to the faid J. H. or some other agent or agents of the faid T. C. and L. M. and grievously complained of the great injury done him by the faid T. C. and L. M. in forcing him by fuch undue means to relinquish so great a part of his just demands; but the faid J. H. and other the agents of the faid T. C. and L. M. absolutely refusing on the part of the said T. C. and L. M. to pay him any thing, or to fettle his account upon any other footing than that of the faid pretended and unjust agreement; and he the faid C. S. having no way to compel the faid T. C. and L. M. in that country to difcharge the faid bonds, and being much terrified with the apprehensions of a rigorous profecution, he was fo far imposed upon and intimidated as to deliver up to the faid agents and fervants of the faid T. C. and L. M. all his faid binds, and to fign some release or discharge for the money due thereupon, upon their discharging him f. om the said fum of - due from him as aforefaid, and paying to him the further fum of -- and no more, instead of _____ and upwards, then justly due to him heir

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him from the faid T. C. and L. M. upon the ballance of his account, fo that he was by the faid force and threats compelled to accept of less than his just demands by the sum of - and your orators expresly charge, that the faid force and threats were made use of in pursuance of directions by the faid T. C. and L. M or one of them, or have fince been approved of and authorifed by them, and were for the benefit of the faid T. C and L. M. they taking advantage of the faid unjust and extorted compensation of the said debt; and that the faid T. C and L. M. or one of them, in order to induce their faid fervants and agents to proceed in that manner, did actually promife to allow to their faid fervants or agents, or some of them, some certain premium or reward by the hundred for all monies which they should fave to the faid T. C. and L. M. in stating the accounts of the said C. S. out of what monies were justly due to him upon the faid accounts; and an account being drawn by the faid 7. H. to shew how much was faved to the said T. C. and L. M. by the said transactions with the faid C. S. the faid T. C. and L. M. or one of them, did afterwards actually pay or allow unto the faid 7. B. and 7. H. or some other of their servants or agents, the fail premium or reward for the faid fum of ——— being the fum appearing by the faid account so drawn by the said J. H. and by the books of their faid agents fince transmitted from thence, and now in the custody or power of the said T. C. and L. M. or one of them, to be saved to them by the transactions aforesaid out of what was justly due from them to the faid C. S. as aforelaid; And your orators further shew, that the said C. S. refiding in — and being advanced in years and incapable of taking fo long a voyage as from thence to Great Britain, and having no way to commence any correspondence with any persons here.

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here, or to appoint any persons to complain to any court of justice here of the faid fraud and oppression but by means of the fervants or agents of the faid T. C. and L. M. whom he was not able to prevail with to do him any fuch office; no fuit in law or equity was commenced against the said T. C. and L. M. upon account of the faid demands during the life-time of the faid C. S. who departed this life in and Ifome time in the year -...... And your orators shew, that your orator C. C. is his only fon and fole heir, and as fuch is, by the law of --(in which country he has always refided) well intitled to all the real and personal estate, and also to all the rights and credits of him the faid C. S. without taking administration, or any other ceremony; and your orator J. R. fince the decease of the faid C. S. hath obtained letters of administration out of the prerogative court of the archbishop of Canterbury of all and fingular the goods and chattels, rights and credits which were of the faid C. S. at the time of his decease, in trust for your orator C.C. he the faid C. S. having made no will or other difposition of his effects, but having died intestate, as by the faid letters of administration in the custody of your orator 7. R. and ready to be produced to this honourable court, may appear; And your orators expresly charge, that no other administration hath been committed of the goods and chattels, rights or credits of the faid C. S. And your orators farther shew, that on the -- day of -- in the faid year -- there being due from the faid T. C. and L. M. to the faid C. S. upon the ballance of their accounts, the fum of - foreign money of -- as aforefaid; and there having accrued due to your orators from that time to the -- day of last, for interest for the same, the further fum of _____ after the rate of interest aforesaid, in all — being of the value of — of lawful money

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money of *Great Britain*, your orators well hoped, that the faid T. C. and L. M. would have redelivered to our orators the faid bonds fo unjustly and unduly brained from the faid C. S. and would have paid to hem the same; and for that purpose your orator 7. R, in his proper person, and your orator C. C. by the sour orator 7. R. his attorney lawfully authorised, re in have in an amicable manner applied to the faid T. C. your and L. M. for that purpose; But now so it is, fon may it please your Lordship, that the said T. C. and L. M. combining and confederating themin. Elves to and with the faid \mathcal{F} . B. and \mathcal{F} . H. and also and with divers persons unknown to your ora-2. 8. tors, whose names when discovered, your orators tere- pray may be inserted herein, with apt words to that the state of the state of the faid contriving to defeat your orators of the effects of the faid c. S. so fraudulently op of obtained from him as aforesaid, do absolutely refuse tels, to come to any account with your orators touching the premission, most unjustly insisting, that the detelivery of the faid bonds by the faid C. S. and the igning the faid release is a legal bar to your orators demands; whereas your orators do expressly charge, hat the faid bonds and release were obtained from him the faid C. by threats and cruel confinement, and great imposition, and therefore ought to be set afide in a court of equity; it plainly appearing by the books of the faid T. C. and L. M. that no manher of fatisfaction whatfoever was ever made to the faid C. S. for the fum of ---- or any part thereof; And at other times the faid T. C. and L. M. pretend that they or either of them never were indebted to the faid C. S. in any fum of money whatfoever; whereas your orators do expresly charge, that the truth of the matters herein before fet forth will appear as well from the books of the said T.C. and L.M. and the accounts and entries of their transactions kept by themselves and their servants, as by other

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other good proofs thereof, which your orators are able and ready to lay before your Lordship; and at other times the faid T. C. and L. M. pretend, that they are intitled to the benefit of the delivering up of the faid bonds by the faid C. S. in manner aforesaid. and that if he was imposed upon therein, your orators ought to feek their remedy against their fervants and agents who were guilty of the faid fraud and imposition; whereas your ora ors charge, that the faid T. C. and L. M. having confented to fuch fraud and imposition, and received the benefit and advantage thereof, they ought to be looked upon as parties to the faid fraud and imposition, and cannot be intitled to receive any benefit from the same; and the faid T. C. and L. M. fometimes pretend, that the faid bonds or any of them, from the tenor thereof, are not, nor ever were, a proper charge upon them the faid T. C. and L. M. and that they are not obliged to pay the same or any part thereof; and that the faid C. S. was imposed upon in the accepting of the faid bonds by the faid J. G. S. C. E. B. and J. R. who had not authority, as they the faid defendants pretend, from the faid T. C. and L. M. or either of them, to give fuch bonds, or to charge them the faid T. C. and L. M. thereby, and that your orators ought to feek their remedy for the same against the said J. G. S. C. E. B. and J. R. whereas your orators do expresly charge, and so the truth is, that the faid bonds were given to the faid C. S. for a just debt then due from the said T. C. and L. M. to him, the same being the ballance of the account then stated as aforesaid between him and the faid T. C. and L. M. and as a folid and fufficient lecurity for the fame; and in case they were not so, the giving the same was a gross fraud, practifed by the faid T. C. and L. M by their faid agents upon the faid C. S. and the faid debt ought to be ftill looked upon as subsisting in case the said bonds are nota good rs are

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good charge upon them the faid T. C. and L. M. and were no just fatisfaction or proper fecurity for the faid former debt; and your orators do humbly infift, that in case the said C. S. was imposed upon or defrauded in accepting of the faid bonds, the faid T. C. and L. M. ought to be looked upon as parties to fuch fraud and imposition, in as much as they from time to time gave credit to the faid bonds, by crediting the account of the faid C. S. with the principal money and interest thereby fecured or mentioned fo to be, and by payment of feveral confiderable fums in part of the fame, and by that means preventing his feeking any remedy against the faid 7.G. S. C. E. B. and J. R. touching the faid demands, in case they were liable thereto; and your orators farther shew, that soon after the giving of the faid bonds they the faid J. G. S. C. E. B. and 7. R. either continued to refide in — or otherwife withdrew themselves into other parts remote and unknown to your orators, and out of the dominions of his Majesty and the jurisdiction of this honourable court, fo as they or any of them are not amesnable to justice by any process of this honourable court; and your orators are not able to discover where they or any of them do now refide; And your orators farther charge, that the then fervants and agents of the faid T. C. and L. M. who were concerned in the faid fraud and imposition, except the said J. H. and 7. B. are long fince dead, or in places remote and unknown to your orators, and where they cannot be reach'd by the process of this honourable court; And the faid T. C. and L. M. or the faid J. B. and J. H. or one of them, now have or very lately had in their or one of their custody or power, or in the custody or power of some or one of their servants, the faid bonds fo taken from the faid C. S. and the books and accounts, by which it fully appears, that the faid fum of —— was never paid or fatisfied,

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but was faved to the faid T. C. and L. M. as afore faid; the which bonds are the proper evidence your orators faid demands, and they detain then from your orators; and the faid T. C. and L. M do refuse to discover unto your orators, whether or no the faid 7. G. S. C. E. B. and 7. R. or any them, or any other of their agents or fervants a aforesaid, had authority from them the said T. C. and L. M. to flate the accounts of the faid ? S. or to give the faid bonds as aforefaid, or by what instrument, appointment, powers or instructions the were fo authorised, or whether or no the said stating of the faid accounts, or the giving of the faid bonds was ever agreed to or approved of by the faid T.C. and L. M. or either of them. All which actings and doings, and pretences of the faid T.C. L.M. 7. B. and 7. H. and the rest of their confederates are contrary to all equity and good conscience, and greatly tend to the defrauding and defeating of your orators of their faid just demands. In tender ton sideration whereof, and forafmuch as your orators are without remedy in the premisses at the common law, and are proper to be relieved before your Lord thip in a court of equity, where frauds and impofitions are fet aside, and evidences unduly detained are directed to be delivered up, and where mutual accounts are taken and ballanced, and matters of this kind are properly cognizable; To the mo therefore that the faid T. C. and L. M. J. B. and 7. H. and their confederates, when discovered, may full, true and perfect make to all and every the matters and things herein contained, as particularly as if the same were here repeated and distinctly interrogated; and that not only as to their direct and politive knowledge and remembrance, but also as to the best of their information, judgment and belief, and especially that the said T. C. and L. M. may answer and set forth, whether or no your orator C.

C is not the fon and fole heir of the faid C. S. and whether by the laws of - or the laws in use in or the county thereunto adjoining, your orator C. C. is not intitled to all the moveable and immoveable effate and effects of the faid C. S. and to all his rights and credits; and whether the faid T. C. and L. M. were not in or about the year indebted unto the said C. S. in a very considerable, and in what particular fum of money, and whether an account was not about that time taken thereof in manner as is herein above fet forth, or in any other manner, and how; and what was the result of that account, and what ballance was thereupon found due unto the faid C. S. and whether or no the bonds abovementioned, or fome, and which of them, or any other, and what bonds were given by the faid T. C. and L. M. on their faid agents on their behalf, and on their account, to the faid C. S. upon that or any other, and what account; and may fet forth, whether or no, at the time that the faid C. S. came on board the faid ship ____ at ___ bar, he was not intitled to the faid four bonds of the faid T. C. and L. M. or to some other, and what bonds of that nature; and whether it was not at that time, or is not now the custom or usage at - aforefaid, for the forbearance of money at the end of every year, to add the interest then due to the principal, which makes the forbearance of the payment of the money due to be after the rate of three fourths by the hundred, by the month of thirty days, compound interest as aforesaid; and whether or no the faid T. C. and L. M. or either and which of them, had not actually advanced several sums of money to the faid C. S. in part of payment of the faid four bonds; and whether the faid T. C. and L. M. in their accounts with the faid C. S. had not charged him with interest after the rate of three fourths by the hundred, by the month of thirty days, compound

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pound interest for the money so advanced; and whether the faid T. C. and L. M. had not advanced and delivered to the faid C. S. feveral parcels of goods at certain prices in part of payment of the faid bonds; and whether the faid T. C. and L. M. in their accounts with the faid C. S. did not charge him at the faid rate of three fourths by the hundred, by the month of thirty days, compound interest for the value of the goods fo delivered from the time of their delivery; and whether in the faid month of in the year - or - when the faid C. S. was induced to go on board the faid ship at - bar as aforefaid, the principal and interest of the faid bonds estimated at the rate of three fourths by the hundred, by the month of thirty days, compound interest as aforesaid, did not amount to the faid fum of - or to what other fum the fame did amount; and whether the feveral payments made in money and goods for the discharge of the faid bonds, did at that time in the whole, with interest at the rate of three fourths by the hundred, by the month of thirty days, compound interest, commencing from the time of payment of each of the fums of money, or the delivery of each of the parcels of goods, amount to more than or to what other fum the fame did amount in any account given in to the faid C. S. and allowed by him; and if the faid T. C. and L. M. pretend, that fuch fums of money, and the values of fuch goods amounted to more, that then they may fet forth such accounts in the words and figures thereof; and that the faid T. C. and L. M. and the other confederates, may let forth, whether there was not due to the faid C. S. on the ballance of his account in the faid month of — at the latter end of the year the fum of - and whether, notwithstanding there was fo large a ballance due to the faid C. S. the faid T. C. and L. M. by their agents aforefaid, did oblige themselves to pay to the said C. S. more than or what other fum they did oblige themselves pay by the said pretended agreement made on poard the faid ship - and whether such preended agreement, or the obligation executed by the aid C. S. on board the faid ship, whereby he became obliged to deliver up the aforefaid bonds, was exorted by force and violence, or was the refult of any equal or impartial stating of accounts between the faid T. C. and L. M. and the faid C. S. and whether they have not heard, or do not believe, that the faid C. S. was of a fect of religion which strictly forbids the professors thereof to eat meat, drink any ort of drink, or to make use of any refreshment or eale of nature during the time they are upon the fea; and whether or no the faid C. S. was not invited by the faid 7. B. and 7. H. agents of the faid T. C. and L. M. to come on board the ship ——— at bar, — miles from the town of — and his place of abode, in order to fettle his accounts; and whether the faid C. S. was not at that time, and always very ready to fettle his accounts with the faid T.C. and L. M. upon a fair ballance of what was due to him from them for the faid bonds, and of what they alledged he was indebted to them for money and goods advanced to him; and whether the agents of the faid T. C. and L. M. or some or one of them, did not infift upon his defaulking all or the greatest part of what was due on the said bonds, and whether the faid C. S. did not refuse so to do; and whether the faid agents of the faid T. C. and L. M. or some, or one of them, did not thereupon threaten the faid C S. that if he would not comply with the hid demands made on the behalf of the faid T. C. and L. M. he should be carried to _____, where he should settle his accounts; and whether the meaning thereof was not that he should settle his accounts in prison; and whether the faid C. S. was VOL. II.

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not detained -, or for some other, and what phole space of time, on board the said ship -, at he bar in the month of _____, in the latter end of the urfua year _____, till he figned fome writing obliging ime to himself to deliver up the faid four bonds, and njury give a full discharge to the said T. C. and L. M. all demands from them, and what space of time remained on board the faid ship; and whether h did eat any kind of meat or drink any kind of drink or use any ease or refreshment of nature, during th time he continued on board the faid ship; And who ther or no they have not heard, or do not believe that there was force, violence, or threats used, an particularly by threatning to take away his life, of otherwise, to the said C. S. on board the said shi - , to terrify him into the figning an obligation of giving a full discharge to the said T. C. and I M. on their payment of _____, or upon any other and what terms; and whether after the faid C.S had figned fuch obligation, and was permitted tog on shore, the faid 7. H. was not imployed on the behalf of the faid T. C. and L. M. to carry the fa obligation into execution; and whether upon h the faid J. H. fending to the faid C. S. in the mon. of — in the year —, to come to him at he the faid C. S. did not immediately return for an Iwer, that he was afraid to come to the faid 7. H. le he should be treated by him as he had been on boar the ship -; and whether he did not explain the fame to be by putting him under confinement and terrifying him by threatning to take away hi life, as aforesaid; and whether the said J. H. di not acquaint the faid T. C. and L. M. with this an twer of the faid C. S. and whether upon affurance given to the faid C. S. by the faid J. H. that h thould not have force offered, but should be treated in a friendly manner, he the faid C. S. did not the come to him; and whether the faid C. S. in the whole

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hole course of his treating with the faid 7. H. till he --- were paid, and the discharge signed in ursuance of the said forced obligation, did not from me to time most grievously complain of the great njury done him by the agents of the faid T. C. and I. M. in forcing him to relinquish so great a part shis just debt; and whether the four bonds abovenentioned were not delivered up to the faid 7. H. nd a general discharge of all demands upon the said C. and L. M. executed by the faid C. S. in or bout the month of ---; and whether the faid onds were not given up, and the discharge to the aid T. C. and L. M. executed in pursuance of the orced obligation aforefaid, figned on board the faid hip _____, at _____ bar; and whether the faid H. or fome other of the agents of the faid T. C. nd L. M. did not make up the account of the faid S, with the faid T. C. and L. M. to the time of he delivering up of the faid bonds; and whether in he faid account there was not —— allowed, or apearing to be due to the faid C. S. for principal and nterest on the said bonds; and whether in the said count the faid S. C. was made debtor to the faid T.C. and L. M. for more than —, or for what ther fum for principal and interest of money or goods advanced by them to the said C. S. or any ther account whatsoever; and whether by the said I.C. and L. M.'s accounts with the faid C. S. he was made debtor to them in the month of —, for more than -, or for what other fum; and wheher upon the delivering up of the faid bonds, and igning the faid discharge by the faid C. S. he the aid J. H. or any other person on the part of the aid T. C. and L. M. paid to the faid C. S. more than -, together with -- as interest of --, that hould have been paid in ready money the —— beore; and whether there was not ---, or fome other, and what fum of money paid short to the said

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C. S. of what was due on the faid bonds; and who ther the faid article of - was brought to accoun in the faid T. C. and L. M's accounts with the fair C. S. and in what manner the faid article was en tered, and whether the same was or is entered as for much faved to them, or in what other manner the fame was or is entered, to ballance the faid due to the said C. S. as aforesaid; and whether the faid agents of the faid T. C. and L. M. who went to - bar as aforefaid, and the faid defendants? B. and F. H. or some, or one, and which of them have not often made great merit of faving to the faid T. C. and L. M. fo much money by the adjustment with the faid C. S. as aforefaid; and whether the faid T. C. and L. M. or either, and which of them have not been applied to by their faid agents, of some, or one, of them, for some recompence to fuch great fervice; And whether the faid T. C. and L. M. have not diaries, books of accounts, and books of confultations at ——— fent every year to them into England; and that the faid T. C. and I M. before they put in their answer to this your ora tor's bill, may cause diligent search to be made in the faid diaries, books of accounts, and books of confultation, and the feveral other accounts and mi nutes hereby inquired after; and that they may he forth a true copy of the diary or confultation held on board the ship — on the — of —, a which were present the faid J. B. and J. H. and that the faid J. B. and J. H. may teverally and respect tively fet forth what they know, remember, or have been informed concerning the transactions with the faid C. S. touching his faid bonds and accounts with the said T. C. and L M. on board the said ship ---, or at any time afterwards; and that the fact T C. and L. M. and the faid J. H. may fet forth true copy of the faid account drawn by the faid H. as aforefaid, shewing how much was faved to whe-

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aid T. C. and L. M. by the faid transactions with he faid C. S. and that the faid J. H. and J. B. may everally answer and set forth, if any, and what premium or allowance was given or made to the faid fervants or agents by the faid T. C. and L. M. for or respect of the money saved to them by their said ransactions with the said C. S. or whether the said I.C. and L. M. or either, or which of them, did not promise to make or give them some and what allowance or premium thereupon, and whether the aid J. B. and J. H. have not made several, and what applications, to the faid T. C. and L. M. either and which of them, for some, and what premium or allowance thereupon, and what was the refilt and consequence of such applications, according to the best of their knowledge, remembrance or belief; and that the faid defendants, and every of them, may let forth what is now become of the fame bonds, and of every of them, and where, and in whose hands, custody, knowledge, or power, the ame bonds, or any of them now are, or at any time fince the delivering up of the same, and when last were, or have been, and whether the faid bonds, or home of them, and to what amount, have not fince the delivering up thereof been in the custody of the faid T. C. and L. M. or of the faid other defendants, or one of them; and whether the faid C. S. be now living or dead, and if he be dead, when he died, and in what country, to the best of their knowledge, information, and belief; and whether he or your orator C. C were ever in Great Britain, as they know or believe; and that the faid release so unjustly obtained from the faid C. S. may be fet aside and delivered up to your orators to be cancelled; and that the said bonds may be delivered up intire and uncancelled to your orators, and that the faid T. C. and L. M. may come to a fair account with your orators, touching all monies due to the faid C. S. in U 3 his

his life-time, or to your orators or either of them in his right, fince his death, for principal and in terest upon the said bonds, and all just demands and accounts depending between the faid T. C. and L. M. and him the faid C. S. in his life-time, and may pay to your orators what shall appear to be due upon the balance of fuch accounts; and that your orators may have fuch farther and other relief touching the premisses, as shall be agreeable to equity, and a your Lordship shall think sit. May it please, &.

A bill for tithes.

To the Right Honourable, &c.

TUMBLY complaining, sheweth unto your Lordship, your orator J. P. of P. in the county of C. that your orator now is, and for his years last past hath been seised in fee, and proprietor and owner of all and every the tithes of corn and grain, and other great and predial tithes whatfoever arifing, renewing, increasing, and growing within the townships, hamlets and vills of W. and A. and the tithable places thereof in the parish of B. and parcel of the impropriate rectory thereof in the faid county of C. and particularly of the tithes of com and grain, and other great and predial tithes arising renewing, increasing and growing in, uson and within she tenement called B. in A. and W. aforesaid, or one of them, and by reason thereof during all the time aforefaid, was and now is justly, rightfully and lawfully intitled unto, and ought to have enjoyed, had, and received, and ought to have, enjoy and receive, all and every the tithes of corn, grain, and other great and predial tithes arifing, renewing, increafing or growing, or which, during the faid time have arisen, renewed, increased or grown within the faid township, hamlets and vills of W. and A. and

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them, and either of them, and particularly in, upon and d in within the faid tenement called B. and also all and so and every the sums, matters and things whatsoever, and L which during the faid time, of right, or by any tustom within the faid township, hamlets or vills, have been payable, as for or on account of tithe roration, grain, or other great and predial tithes, or ching which ought to have been so payed or answered. And your orator further sheweth to your Lordship, Go, that M. B. widow, and B. her son, jointly and severally, for and during the said space of six years. feverally, for and during the faid space of fix years last past, had held, or occupied and enjoyed the faid tenement called B. within A. and W. aforesaid or one of them, or the lands and grounds thereunto belonging, and other lands and grounds within A. and W. aforesaid, or one of them, or the titheable places thereof in and upon the same, and within the faid townships, hamlets and vills, or one of them, and the titheable places thereof, and had jointly and feverally growing, renewing, increasing, and thence reaped, and had, and took in the faid years respectively feveral quantities of corn and grain, to wit, in each of the said years 100 shocks or hattocks of wheat, the tithe whereof in each year, if duly paid, would have been worth 20 s. One hundred shocks or hattocks of rye, the tithe whereof was worth in each year other 20 s. Three hundred hattocks or shocks of oats, the tithe whereof would have been worth in each of the faid years, if paid, 30 s. One hundred and fifty shocks or hattocks of barley, the tithe whereof, if the same had been duly answered, would have been worth other 30s. One hundred thocks or heaps of beans, the tithe whereof was worth 15 s. One hundred shocks or heaps of pease, the tithe whereof was worth other 15s. Two hundred shocks or hattocks of bigg, the tithe whereof was worth 30 s. and upwards. All which faid several tithes became due and payable from the said U4

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M. B. and B. her fon, jointly or feverally, in each of the faid years, and ought to have been justly and duly paid and answered unto your orator as proprietor and owner of the faid tithes and premisses. 15ut fo it is, may it please your Lordship, that the said M. B. and B. having entered into a combination and confederacy between themselves, and with several other persons unknown to your orator, who when they shall be discovered, your orator prays they may be made parties hereto, with apt words to charge them, have and either of them hath neglected. omitted and refused to set out, pay, satisfy, or anfwer, and have not, nor hath either of them in any of the faid years, fet out, paid, fatisfied, or answered unto your faid orator the faid feveral and respective tithes, or any of them, or made any agreement, composition, or just satisfaction to your said orator for the fame, or any thing in lieu thereof, but though in a friendly manner requested thereto, have and hath jointly and feverally refused to fet out the fame, or to pay or answer what is justly due to your orator on those accounts, or fairly or justly to set forth, yield, or pay their and either of their faid tithe, or to pay and make him any just satisfaction for the same, or for any the tithes substracted and with-held by them or either of them; but as they have concealed, so they do, and each of them doth ende your to conceal the faid titheable matters, and refuse to discover what lands, tenements, and hereditaments in particular they jointly and feverally held, occupied, plowed and reaped within the faid township, hamlets and villages in each of the said years, nor what tithes of corn and grain they in each of the faid years, or either of them respectively with held and detained from your orator, nor what is and was the value thereof; and as their reason for fo doing the faid confederates fometimes infift, that they have duly paid and answered to your orator the tithes of all and fingular the titheable matters, and and at other times that they are not nor were liable to the payment of any tithe in kind, but exempt and free from the payment thereof under an antient modus or composition of 10 s. yearly, or other the like sum payable time immemorial, in lieu of tithes of corn and grain, and other great and predial tithes arising. renewing, increasing and growing upon and within the said tenement and lands beld, enjoyed, sown and reaped by them in the faid several years aforesaid; which modus they pretend was paid by them in and for the faid several years unto your orator; whereas your orator charges, as the truth is, that the faid confederates, or either of them, did not fet forth, pay, or answer the tithes due to your orator for the corn and grain reaped, had and taken by them, which grew upon the faid tenement, lands and premiffes, or any of them, in or for any the faid years herein before mentioned, nor have they or either of them paid or answered any modus, pretended modus, or composition to your orator for the same, for any of the said years; and the truth is, as your orator charges it to be, that tithes of corn and grain, and other great and predial tithes arising from the premisses, are due and payable, and ought to be answered and paid unto your orator in kind; and the faid confederates are not nor ought to be exempt from the payment thereof, upon any pretence of a modus payable in money, as in lieu thereof, which however was never paid to your orator; and if there was any colour to fet up fuch pretences to a modus, yet that is owing to a late agreement, whilf the lithes, as also the said tenement and lands were in the hands of the family of the M's and not any prescriptive modus, nor was the soid tenement antiently discharged from payment of tithes in kind, upon or under payment of any modus or sum in lieu of tithes; but tithes in kind were paid and answered as for other the lands or tenements within the faid township, till the faid tenem nt and tithes both

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both came into the hands, ownership or possession of M. of H. in the faid county, who fettled and conveyed the faid titbes upon or unto one of his younger sons, from whom the same descended and came to R. M. Esq; bis kinsman, of whom your orator purchased the same; and the faid tenement called B. continuing in the ownership of some other of the M's, near relations to the then proprietors of the said tithes, they on account of kindred or other metives complied to accept 10 s. per annum, or other such sum in money for the tithes arising from the faid tenement, which being a temporary agreement only, and not any modus that had been paid time immemorial, your orator bumbly apprehends himself not to be bound or obliged thereby, nor ought the faid confederates, nor either of them, who, or one of them, purchased the said tenement, or claim under some purchaser thereof, or have or hath possessed the same during the time aforesaid, to have or claim any discharge or exemption from payment of tithes in kind, as upon or under any such pretences, they, or one of them, well knowing or having been informed, or from the papers, books, notes, and memorandums in their keeping or power, may be well satisfied that there was antiently no fuch modus paid or received in discharge of tithes arising from the said tenement; but that which was paid and received as on account thereof was modern and under late agreement and compliance whilst the faid tenements and tithes were both in the hands of the family of the M's; and the said confederates ought of right and justice to have answered and paid unto your orator their faid feveral tithes for the faid titheable matters arising and growing in and upon the said tenement, and within the faid township, vills and hamlets as aforefaid; yet the faid confederates and each of them, under some and the like frivolous and unjust pretences as aforesaid, have refused, and do refuse to pay or answer the said tithes or any of them to your faid orator, or to make him any just fatilfaction M.

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faction for the same, or to make him any full and fair discovery of the titheable matters they severally had within the faid townships, hamlets and vills and titheable places thereof, in the faid feveral years, or any of them, tho' they have been severally requested thereto. All which actings, doings, pretences and defigns of the faid confederates are contrary to equity and good conscience, and tend to your orator's great wrong and injury: In tender consideration whereof, and for that your orator cannot exactly prove the feveral natures, kinds and quantities of the faid titheable matters, nor what the faid tithes due from them and each of them unto your orator did or might in each of the faid years amount unto, but the fame being industriously concealed by the faid confederates remain principally in their knowledge; from whence and the evidence your orator may give, he your faid orator well hopes he shall be enabled to make out his charge against the said confederates, whereupon to be relieved and to obtain fatisfaction for the fingle value of the faid tithes substracted and with-held as aforefaid, and to have fuch other relief and fatisfaction as may appear just: To that end therefore, and in order the eto, that the faid confederates may upon their feveral corporal oaths, true, perfect and diffinct answer make to all and fingular the premiffes, and more especially that they and either of them may discover and set forth what particular lands, tenements, grounds and hereditaments they jointly and feverally had during the faid fix years, or any and what part thereof held, occupied or enjoyed within the faid township, hamlet; and vills, and each of them, and fet forth what parts thereof were in each of the faid years fown with corn and grain, and the pieces, kinds and values thereof in each year distinctly, and what corn they jointly and feverally reap'd, had, cut or took within the faid township, hamlets and vills, and in what years diffinctly

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distinctly of the said six years, and what was and were the full value of the tithe thereof in each of the faid years distinctly, if the same had been paid in kind; and whether your orator, or fome, and who, on his behalf, did not, at fome, and what time and times, apply to them, or one, and which of them, to fet out or answer their, or one, and which of their faid tithes, and shew cause, if they can, why they refused so to do; and whether they have not feverally neglected or refused to pay or answer the fame, or to give any fatisfaction or make any composition or recompence to your orator for or in lieu of the tithes, and what were the feveral tithes of corn and grain grown, reaped, and had by them, and either of them, within the faid township, hamlets and vills, worth, if the same had been justly paid and answered in each of the said six years; and if they, or either of them, shall set up or pretend to any modus or composition, as for or in lieu of the said tithes, or any of them, that they may shew whether they have paid or tendered the same in any and what years, and when, where, and to whom, and for what years the same is arrear and unpaid, and what such modus is in particular, and to what lands, tenements and grounds the same extends, and which is covered or presended to be covered thereby, and which not, and when such modus or composition commenced, and by and under what agreement, and when and with whom made, and whether, as they severally have heard and believe, the tithes of corn and grain growing and arifing from the faid tenement, lands and premisses, or fome, and which of them, were not paid, and what in kind; and whether the 10s. or other sum pretended to be paid or payable as a modu or compo-Sition for or in lieu of great tithes arising from the faid tenement and premisses, was not by or under some, and what agreement or compliance whilft the faid titles and tenement were in the bands of some of the family of the.

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the M's; and whether the same was made perpetual or only temporary, and during what time such modus or composition was paid and accepted, and by whom and when; and that they may make diligent fearch amongst all the books, papers, notes and memorandums in their or either of their custody or power, and fet forth what they know, have heard, or can find relating to the faid pretended modus or payment of tithes in the very words and figures, and shew cause, if they can, why they have severally refused or neglected to fet forth, and pay, and answer their and either of their tithes to your orator, or to make him any recompence, compensation or satisfaction for the same, or for the value, or in lieu thereof; and that the faid confederates may, upon a full and just discovery of the premisses, be decreed and obliged to pay, fatisfy and answer unto your orator all and every the tithes substracted by them and either of them, or the just value thereof, as in every of the faid years became justly due and payable from them and either of them respectively unto your said orator, not defiring to take advantage of the forfeiture of the treble value, but well contenting himself with the fingle value of the faid tithes substracted, with-held, and not paid; and if any modus shall be let up and supported, that they may shew in particular to what lands and grounds the fame extends, and why they have not paid and answered the same, and may be decreed to make payment thereof and of the arrears; and that your orator may, upon a full and fair discovery of all and every the matters and things aforesaid, and of the circumstances and particulars relating thereto, upon the oath of the faid confederates, be otherwise relieved in all and singular the premisses, according to equity and good con-May it please your Lordship to grant unto your orator his Majesty's most gracious writ of subpana to be directed to the faid M. B. and B. her son, thereby commanding them, &c. A bill A bill to carry articles of agreement into execution, by a bargainor against a bargainee, and for a specifick performance thereof. cal

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To the Right Honourable, &c.

TUMBLY complaining, fleweth unto your Lordship, your oratrix E. G. of B. in the county of C. widow, that your oratrix being feiled in fee of and in a freehold meffuage and tenement with the appurtenances, fituate, lying, and being in B. aforesaid, which she and J. T. her late father deceased, in or about the year of our Lord conveyed by way of mortgage unto 7. L. late of L. in the faid county of C. yeoman, fince deceased, and his heirs for fecuring the repayment of the fum of — with interest after the rate of ten-pence in the pound or thereabouts; and your oratrix being also seited in see, or otherwise well intitled, to her and her heirs, according to the custom of the manor of W. in or to a customary or tenant right messuage or croft called P. messuage, with the garth and front to the fame adjoining, and part of another garth or curtilage lying at the west end of the beforementioned freehold messuage, and allo of divers parcels of customary or tenant-right lands herein aftermentioned, parcel of the faid manor of W. and fituate, lying and being within the township or town fields of B. aforesaid, namely, two butts of arable land on the east-side of the gards; four riggs of arable land called the croft, containing by estimation two acres or thereabouts; three feveral parcels of arable and meadow ground fituate, lying and being in a place called the -, and containing together by estimation half an acre, or thereabouts, and all of them abutting on the Lord's wafte ecuand

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waste towards the north; one other parcel of ground called —, containing by estimation one rood or thereabouts; one parcel of ground called the land, containing by estimation one rood or thereabouts; and one parcel of ground called B. containing by estimation half an acre or thereabouts; and your oratrix being fo feifed and intitled to the faid freehold and customary messuages, lands and premisses, and being desirous to make sale thereof in order to raise monies wherewithal to discharge the aforefaid mortgage, she did therefore give publick notice for the fale of the fame by publick cant or auction, to the best bidder, to be on the —— day of ____ last; at which time the faid messuages, lands and premisses were put up to fale accordingly; and T. P. of E. in the parish of B. in the county of C. yeoman, and divers other persons, offered themselves as purchasers, and bid monies for the faid premisses; and the said T. P. having at last offered and bid the fum of -, a bargain was fruck with him as being the highest bidder for the same; and thereupon your oratrix and the said T. P. (who had been informed and very well underflood that the faid freehold meffuage and tenement flood incumbered with the aforefaid mortgage) entered into and mutually figned articles of agreement between them, bearing date the —— day of - in the year of our Lord - and made or mentioned to be made between your oratrix of the one part, and the faid T. P. of the other part, whereby your oratrix, for and in confideration of the fum of —— of lawful British money, to be paid as in the faid articles is mentioned, covenanted and agreed with the faid T. P. that your oratrix would, on or before the ——— day of —— then next enfuing (at the proper costs and charges of the faid T. P. and by fuch conveyances, ways and means in the law as his counsel should advise) grant, con-

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vey and affure unto the faid T. P. his heirs and affigns, all that her faid two messuages and freehold lands (one acre called W. croft fide and east garth, and half an acre called T. rigg, and also the half rigg and G. butts, being parcels of the faid freehold tenement, only excepted and foreprized) together with the beforementioned parcels of cuftomary or tenant-right lands, containing by estimation three acres and a half, or thereabouts, free from incumbrances; And it was in and by the faid articles of agreement, covenanted and agreed, that your oratrix should have and hold for her life the mansion-house wherein she then lived, together with the buyer at the end, and a little barn at the north end of the old house; and that the faid T. P. should pay to the Lord of the faid manor the yearly apportioned rent of 4 s. for the faid customary premisses agreed to be conveyed to him as aforefaid, together with four-pence yearly in lieu of boon days; as also four-pence yearly as for his proportion of the prescription money, payable out of the faid customary tenement, for and in lieu of the tithes thereof; and that your oratrix should have a proportionable share of the mosses belonging to the aforefaid meffuages, as also of the mire in the place called the W. and the faid T. P. did, in and by the faid articles of agreement, for himself, his heirs and affigns, covenant and grant to and with your oratrix, her heirs and affgns, that he the faid T. P. should and would pay unto your oratrix, or her affigns, the fum of ---, part of the faid consideration money, upon the executing fuch conveyances of the premisses as aforesaid; and the further fum of --- on or before --- day of --- next following; and the further fum of —— refidue of the faid confideration money, on or before the day of ----, as and for the purchase money of the faid meffuages and premisfes abovementioned, as by and

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the faid articles of agreement under the hands of your oratrix and the faid T. P. ready to be produced to this honourable court (relation being thereunto had) it doth and may more fully and at large appear; and your oratrix further sheweth unto your Lordship, that 7. L. of L. aforesaid, yeoman, executor of the said J. L. the mortgagee, being made acquainted with the contract made between your oratrix and the faid T. P. for the purchase of the faid premisses, did promise and agree to accept of the monies due upon the faid mortgage, amounting then to the fum of ——— or thereabouts; and upon payment thereof, to join with your oratrix in such conveyance or conveyances of the said freehold premisses, as he and the said T. P. or his counsel learned in the law should reasonably devise, advise or require. And your oratrix hath frequently and in an amicable manner applied to the faid T. P. to know by what conveyance, ways and means in the law he would have the faid purchased messuages, lands and premisses granted and conveyed to him, your oratrix at the same time offering and proposing to the faid T. P. that she and all others having and claiming any effate, right, title, or interest of, in, to, or out of the faid premisses, should join in making and executing any fuch grant and conveyances thereof free of all incumbrances, as he the faid T. P. should require, or his counsel should devise or advise in that behalf, according to the true intent and meaning of the articles of agreement fo made as aforesaid; and the said T. P. for some time seemed inclinable to come into measures, as if he would proceed in the purchase of the said premisses; and in profecution thereof actually contracted and agreed with your oratrix to permit her to occupy and hold the possession of one acre in L. one acre called —, half an acre called G. one rood in S. land, half an acre in N. lands, three days work of meadows in VOL. II. B.

B. fields, two roomsteads in the barn, and a parcel of ground lying behind the faid barn in a place called the W. gards or garth, being parcel of the faid freehold premisses; and also two acres called C. with the gards and front, being parcel of the faid customary premisses, and one rood of freehold lying in it; half an acre called N. and one rood in S. being other parcel of the faid customary premisfes purchased as aforesaid for one year, to be com-- last past, at or under the yearly puted from -And though your oratrix having proposed and offered to the said T. P. to do and perform, and to cause and procure to be done and performed, every thing that was requifite and reasonable (and on her part to be performed) in order to grant, convey and affure to the faid T. P. his heirs and affigns, the faid purchased messuages, lands and premisses according to the tenor and intent of the faid articles of agreement, had good reason to expect that the said T. P. would have signified to your oratrix how or in what manner he would have the same conveyed to him, so as your oratrix might have had the effect of the faid agreement answered and performed, and the consideration money stipulated to be paid as aforesaid, paid and secured to her at the days and times in the said articles of agreement mentioned in that behalf, as in justice she ought: Det now so it is, may it please your Lordship, that the said T. P. having entered into a combination and confederacy to and with the the faid J. L. and J. L. of the town and county of N. merchant, eldest brother and heir of the said J. L. deceased, and to and with divers other persons as yet unknown to your oratrix, (whose names when discovered your oratrix prays may be inserted herein, with apt and proper words to charge them and every of them as defendants) to defraud your oratrix of the premisses; and they having thereupon formed

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formed a design to disappoint her of the said purchase monies, and to defeat her of the benefit of the faid articles of agreement fo made and entered into as aforesaid, he the said T. P. for that purpose has refused, and persists in his refusal, either to signify to your oratrix what manner of conveyance he requires, or his counsel advises, to be made to him of the faid meffuages, lands and premisfes, or yet to accept of any conveyance whatfoever thereof, or to pay or secure to your oratrix any part of the monies agreed by him to be paid for the purchase of the faid premisses; and to give some countenance to the unjust pretences and refusals of the said T. P. they the faid J. L. and J. L. do pretend and give out, that the legal estate of and in the said premisses being in the said J. L. by virtue of the mortgage aforesaid to the said J. L. their brother, they the said 7. L. and 7. L. are not, nor is either of them, under any obligation to execute or to join with your oratrix in any conveyance thereof, or to do any act towards the performance and execution of the faid articles of agreement; whereas your oratrix charges, (and fo the truth is) that they the said J. L. and J. L. have not, nor hath either of them, any other estate, right, title or interest, of, in, to, or out of the faid meffuages, lands and premiffes, or any part thereof, fave only by way of mortgage for the fecuring only the fum of - or thereabouts, which your oratrix proposes may be fatisfied and answered from and out of the first payment of the purchase money in the said articles of agreement mentioned, and which your oratrix hath offered, and is ready to pay, or appoint to be paid to them, or such of them, as shall be intitled thereto, upon their reconveying to your oratrix the faid mortgaged premisses, or otherwise upon their joining with her in a proper conveyance thereof unto the faid T. P. And though your oratrix hath requested

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quested the said 7. L. and 7. L. to come to an ac. count with her, touching the demands which they or either of them may have or claim, of, in or out of the faid premisses, so as the same might be settled. and your oratrix have an opportunity to pay off and discharge the same, and to take a reconveyance of the faid mortgaged premisses, yet do they severally refuse to comply therewith nor will they make any discovery of the particulars of their demands. and what remains juffly due to them or either of them for principal and interest upon the mortgage, nor admit your oratrix to any redemption of the faid premisses; All which actings, refusals, pretences and defigns of the faid confederates are contrary to equity and good conscience, and tend to your oratrix's great wrong and injury. In tender congideration whereof, and forasmuch as your oratrix cannot compel a conveyance of the faid mortgaged premisses, nor obtain a due execution, or any specific performance, of the contract and articles aforefaid, or be otherwise relieved in the premisses than by the aid and affiftance of this honourable court; To the end therefore, and in order that the faid T. P. J. L. and J. L. and their confederates, when and as they shall be discovered, may upon their several and respective corporal oaths true and perfect answer make to all and fingular the premisses herein before set forth, as fully as if the same were here again repeated, and particularly interrogated to be answered unto, and more especially that the said confederates may, according to the best of their respective knowledge, information and belief, anfwer and fet forth, whether your oratrix was no feised in see, or how otherwise well intitled, in and to the faid freehold and customary, or tenant-right messuages, lands, hereditaments and premisses, a herein before is fet forth; and whether she did no give such notice for the sale thereof as herein before

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is mentioned; and whether the faid T. P. was not the best bidder at such sale; and whether a bargain was not struck with him for the faid premisses; and whether he did not come to fuch agreement, and enter into and fign fuch articles for the purchase thereof upon such terms, and at and for such rate and price, and to such effect, as herein before is in that behalf fet forth, or to any other, and what effect and purpose; and whether they the said 7. L. and J. L. were not, or one of them was not present at the said sale, and consented thereto, or shortly and how soon after such sale acquainted therewith; and whether they, or one, and which of them, did not thereupon agree and promife to join with your oratrix in granting and conveying the faid premisses, or some, and what part thereof, unto the faid T. P. and his heirs; and whether your oratrix hath not feveral times applied to the faid T. P. to know how or by what means or manner of conveyance he required, or his counsel advised, the said bargained premisses to be granted and conveyed to him, and why or for what reafon or reasons he refused to fignify the same to your oratrix, or to accept of any conveyance of the faid premiffes, or yet to pay or fecure to your oratrix any part of the monies agreed to be paid for the purchase thereof; and that the said 7. L. and 7. L. may severally answer and set forth, whether your oratrix did not make feveral and what offers and propofals to induce them, or the one and which of them, to join with your oratrix in granting and conveying the faid bargained premisses unto the faid T. P. and his heirs, and that they may shew cause (if they can) why they should not join with your oratrix in fuch grant or conveyance, or otherwise reconvey to your oratrix the said freehold premisses, upon payment of what shall appear to be justly due upon the mortgage thereof to the faid X 3 7. L.

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7. L. deceased, and that they may set forth what is really and justly due to them or either of them for principal and interest upon the said mortgage, and may come to a fair a count with your oratrix touching the fame; and your oratrix being willing that fo much as shall appear, upon a fair and just account, to be due may be paid and answered by the faid T. P. out of the monies by him agreed to be paid for the purchase of the said bargained premisses, and which your oratrix doth hereby offer to allow to him, as so much paid on that account, that the faid J. L. and J. L. may be obliged upon payment thereof, to join with your oratrix in granting and conveying to the faid T. P and his heirs the faid bargained premisses, or otherwise so to reconvey the same to your oratrix free from all incumbrances done by them or either of them, or by the faid J. L. deceased; and so as thereby your oratrix may be enabled to execute the faid articles of agreement, and perform the true intent thereof on her part to be performed; and that the faid T. P. may either fignify to your oratrix how and by what manner of conveyance or conveyances he will require, or his counsel shall advise, the said bargained and fold premisses to be granted and conveyed to him, or otherwise that he may be decreed to take and accept of a proper and fufficient conveyance or conveyances thereof, and to pay or cause to be paid unto your oratrix or her affigns the confideration monies agreed by the faid T. \bar{P} , to be paid for the purchase of the said premisses, at such days, and in such manner, as in the said articles of Agreement are mentioned in that lehalf; and that your oratrix (who was always ready and willing, and doth hereby offer to perform and execute every thing in the faid articles contained on her part to be done and performed,) may receive such further and other relief in the premisses as the nature of her case requires,

requires, and as shall be agreeable to equity and good conscience. May it please your Lordship, &c.

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Bill for a specific performance of an agreement for the purchase of a lease.

HUMBLY complaining, sheweth unto your Lordship, your orator A. B. of —— in the county of — that C. D. of — in the county of - being, or pretending to be, pofsessed of a leasehold messuage, tenement and garden, with the appurtenances, fituate in - aforefaid, which he held by a lease granted from E. F. of _____ in the county of _____ for the term of 15 years, commencing from Michaelmas last, and he being willing and defirous to fell and affign over the faid term, your orator in or about the month of - last (after several meetings had for that purpose) came to an agreement with the said C. D. for the absolute purchase of the said lease, and all his interest therein; and which agreement was reduced into writing, and is in the words and figures following, (that is to fay) August 4th ---; Memorandum, it was this day agreed by and between C. D. of ——— in the county of ——— and A. B. of the same place, that the said C. D. shall, on or before the 8th day of August instant, grant, bargain, fell and affign over unto the faid A. B. all that messuage or tenement, and garden, with the appurtenances, except one cellar, now in the occupation of H. P. fituate in ——— in the county of - in High-Street there, and which was lately in the possession of the said C. D. and by him held by lease of E. F. Gent. for the term of 15 years, to commence from Michaelmas last, and the said A. B. is, in confideration of the sum of 101. per X 4 Annum,

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Annum, to have the faid premisses for the remainder of the faid C. D.'s term, free from taxes and reparations: And the faid C. D. in confideration of this agreement, hath received of the faid A. B. 25. 6d. as in and by the faid memorandum or agreement, figned by the faid C. D. and your orator in the presence of W. D. and J. S. now in your orator's custody or power, ready to be produced. relation being thereunto had, may more fully and at large appear. And your orator further sheweth unto your Lordship, that your orator was always ready and willing to perform his part of the faid agreement, and to have accepted an affignment of the faid lease pursuant thereto; and for that purpose your orator caused a common assignment of the said lease to be drawn for the remainder of the faid term of 15 years, and which was to commence from the 29th day of September last, pursuant to the faid agreement, and tendered the fame to the faid D. to be executed by him, and likewise your orator at the same time offered to execute a counter-part thereof: And your orator hath frequently, both by himself and others, both before and since fuch tender and offer made, applied to the faid C. D. in a friendly manner, and requested him to deliver up the faid leafe, and to execute the faid affignment as aforesaid, and which your orator did not in the least doubt but the said C. D. would have What now to it is, may it please your Lordship, that the faid C. D. combining and confederating to and with divers other persons, at present unknown to your orator, whose names when difcovered, your orator prays may be herein inferted, and they made parties hereto, with apt words to charge them, endeavouring to wrong and injure your orator in the premisses; he the said C. D. peremptorily refuses to perform the said agreement, and to deliver up the faid leafe, and execute a proper affignnder

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affignment thereof to your orator, or to permit your orator to enter and take possession of the said mesfuage or tenement and premisses, pursuant to the true intent and meaning of the faid agreement. under consideration whereof, and forasmuch as your orator is remediless in the premisses by the frict rules of the common law, and cannot compel a specific performance of the said agreement, but by the aid and affiftance of this honourable court, where matters of this nature are properly conizable and relievable; To the end therefore, that the said C. D. (and his confederates, when discovered,) may upon their corporal oaths, true, direct, and perfect answer make to all and fingular the matters aforesaid, and that as fully and particularly as if the same were here again repeated and interrogated; And more particularly that the faid C. D. may fet forth and discover whether he did not enter into fuch memorandum or agreement as herein before is mentioned, or any other, and what memorandum or agreement; and whether your orator hath not caused a common affignment of the said lease to be drawn, and tendered to him the said C. D. to be executed pursuant to the faid agreement; and whether your orator hath not, fince fuch tender made, by himself and others requested the said C. D. to execute the faid affignment, and specifically to perform the faid agreement; and whether he hath not refused so to do; and why, and for what reason; and that the said C. D. may be compelled to a specific performance of the said agreement, and may execute a proper affignment of the faid lease, for the remainder of the said term of 15 years yet to come and unexpired, to your orator, according to the true intent and meaning of the faid agreement; And that your orator may have the possession of the said estate and premisses; and that that your orator may have such other, and farther relief in all and singular the premisses, as to your Lordship shall seem meet; May it please your Lordship, &c.

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A bill to revive and answer.

HUMBLY complaining, shew unto your Lordship, your orators A. B. of _____ in the county of ___ gentleman, C. D. late of ___ aforefield, and late curate of --- in the county aforefaid, now of — in the county of — clerk. E. F. of — aforesaid, and G. H. of in the county aforesaid, yeoman, administrafors of all and fingular the goods and chattels, rights and credits of J. K. late of — in — aforefaid, deceased, with the last will or testamentary schedule of the faid 7. K. annexed; That in or about Easter term, which was in the year of our Lord your orators exhibited their bill of complaint into this honourable court, against A. B. L. M. N. O. P. Q. and R. S. of — aforefaid, and T. V. for an account of the personal estate of the said 7. K. and for an Injunction, and to be relieved touching the feveral matters and things in the faid bill complained of. And your orators farther shew unto your Lordship, that the said defendants being duly ferved with process to appear to and answer the said bill, they the faid defendants feverally appeared accordingly, and put in their answers thereto, and the injunction obtained by your orator in the faid cause was diffolved; and thereupon your orators, in or about Michaelmas term - obtained an order to amend their bill of complaint; and the same was amended accordingly against the said defendants, and one J. W. was add d a party thereto: And the faid defendants being all duly ferved with process

to appear to and answer the faid amended bill, they feverally appeared accordingly, and put in their answers thereto; and the injunction granted upon exhibiting the faid amended bill, was (upon shewing cause) also dissolved; as in and by the said original and amended bill, answers, order, and other proceedings had in the fame cause, and now remaining as of record in this honourable court, may more fully appear, and which your orators hereby crave leave to refer themselves to: But before any farther proceedings were had in the faid cause, the faid L. M. departed this life, to wit, in or about the month of ——— last past, whereby the said fuit as to him became and is abated; and your orators further shew unto your Lordship, that the said L. M. did in his life-time duly make and publish his last will and testament in writing, and thereof constituted and appointed E. M. his wife sole executrix, who duly proved the faid will in the proper ecclefiastical court, and possessed herself of all her faid testator's personal estate, more than sufficient to pay his funeral expences and all his just debts; whereby the faid fuit ought to be revived as against the faid E. M. his executrix, who now stands in his place and represents him; and your orators (as they are advised) are intitled to have the same relief against her, with respect to the said L. M. his perfonal estate, as they would have been intitled to against him, the said L. M. had he been living; and the ought to answer the premisses, and ought either to admit affets of the faid L. M. fufficient to fatisfy your orator's demands claimed by the laid original and amended bill, or ought to discover and account for his personal estate, as is usual in such cases: To the end therefore, that the said fuit and all proceedings therein may stand revived, and be in the fame plight and condition as they were at the time of the death of the faid L. M. and that

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that your orators may have the benefit thereof; and that the faid E. M. may answer and set forth whe ther the faid L. M. did not make his last will and testament, and thereof did not appoint her the said E. M. executrix, as herein before is fet forth, and whether the faid L. M. did not depart this life a or about the time herein before fet forth, or at of about what other time; and whether she the faid E M. did not prove the faid will in some and wha ecclesiastical court, and possess herself of the said L M.'s personal estate; and that the said E. M. may either admit affets of the faid L. M. come to he hands fufficient to pay all his debts, funeral expences, and legacies, and also to answer your ora tor's demands; or if she shall pretend that the said L. M. did not leave a sufficient personal estate so that purpose, then that she may set forth an account of all debts she pretends to be owing by he faid testator, and to whom, and for what, and upon what securities; and that she may likewise se forth a full, true and particular inventory and account of all and every the goods, chattels and other personal estate and effects which the said testator L M. was at his death possessed of, interested in, o any ways intitled unto, with the nature, quantities qualities, and full and utmost values thereof; and what part has come to her hands, or to the hand of any other person, and whom, for her use, of with her privity, confent or procurement; and how the same has been paid, applied, administred, sold or disposed of by her, or any other person, by he direction or privity, and when, and by and to whom, and for what; and that the faid E. M. may shew cause (if she can) why the said suit and proceedings thereon should not stand and be revived and that the same may be revived, May it please your Lordship, to grant unto your orators his Ma jesty's most gracious writ of subpana to revive and answer,

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answer, issuing out of and under the seal of this honourable court, to be directed to the said E. M. thereby commanding her at a certain day, and under a certain pain therein to be limited, personally to be and appear before your Lordship in this high and honourable court, then and there to answer the premisses, and to shew cause, if she can, why the said suit and proceedings therein had, should not stand and be revived against her, and be in the same plight and condition, as they were at the time of the death of the said L. M. and farther to stand to and abide such order and decree in the premisses, as to your Lordship shall seem meet. And your orators shall ever pray, &c.

Bill of revivor brought by an administratrix to revive the suit wherein her husband was plaintiff, who died pending the suit.

I UMBLY complaining, sheweth unto your Lordship, your oratrix E. M. of &c. widow relict and administratrix of the goods and chattels, rights and credits of F. M. late of, &c. That the faid F. M. in or about Hillary term last past, did exhibit his bill of complaint into this honourable court against F. R. &c. defendants, thereby among other things setting forth, that [Here recite the prayer of the original bill the faid complainant by his faid bill prayed the aid of this court, and that process of subpana might be awarded against the said defendants to appear in this court and answer the premisses, which being granted, and the defendants therewith ferved, they appeared accordingly; and the defendant T. R. answered, and Set forth what proceedings have been in the cause as by the said bill, answer, &c. remaining as on record in this honourable court, relation thereunto being had, may more

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A supplemental bill to deliver up deeds and writings.

H UMBLY complaining, sheweth unto your Lordship, your oratrix, A. B. spinster, one of the daughters of J. B. late of —, yeoman, deceased, that your oratrix, together with E. B. her fifter, as they were two of the daughters and heirs at law of the faid J. B. their father, did on or about the

the — day of — in the year of our Lord ____, exhibit their original bill of complaint in this honourable court against N. T. and R. P. and M. his wife as defendants, for an account of the rents and profits of the real estate of the said 7. B. in the faid bill mentioned, to one third part whereof she was intitled, and also for an account of his personal estate, as he the said J. B. died intestate, and your gratrix and the faid E. were two of his children, and your oratrix and the faid E. her fifter having fuch tile thereto respectively as in the said bill is alledged; and that your oratrix might be let into a redemption of her father's real estate, upon paying what (if any thing) should appear justly due, and for relief. And afterwards the faid original bill was amended, and the faid E. B. who had intermarried with 7. G. and the faid 7. G. were made defendants thereto, and the faid E's name was struck out from being a party to the faid original bill, and the faid defendants being ferved with process of subpana, they did accordingly appear to and answer the said amended bill, and the faid answers were replied unto, and iffue being joined, feveral witnesses were examined; but before publication was passed in the said cause your oratrix fame hath discovered, and your oratrix by way of supplement doth now hereby charge, that the faid N. T. now or late had in his custody or power, or at some time or times had feen or read fome deed of fettlement or writing, and particularly a deed bearing date in or about the year —— of and concerning the real estate of the said J. B. the father, which said deed of fettlement, or some other deed or writing to such purport or effect, was made on the marriage of the faid 7. B. the father, with A. his first wife long since deceased, who was the sister of the said N. T. and thereby or by some other deed or writing the faid irs at real estate of the said J. B. or great or some part bout thereof, was so settled and limited, as that after the death

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death of the faid J. B. the father, without iffue be ment the faid A, the same was to be to the use of the isfu fame or heirs of the body of the faid 7. B. the father; and he the faid J. B. the father had iffue only one child by the faid A. his wife (to wit) J. B. who died long fince without iffue and unmarried, but he the faid 7. B. the father, by E. his second wife, left issue three daughters (to wit) your oratrix and the faid de fendants M. and E. and your oratrix and the faid M and E. are now the heirs of the body of the faid ? B. the father, and intitled to the same by and under the faid deed of fettlement, or other deed or writing as aforefaid; and there happening some difference between the faid J. B. the father in his life time and the said N. T. and there being a bill exhibited in this honourable court in relation thereunto, he the faid N. T. as your oratrix hath lately, and fince iffu was joined as aforefaid, discovered that he the faid N. T. did in his answer to the said bill of the said B. the father, admit that he had in his custody to veral deeds and writings relating to or concerning the faid real estate, and particularly the faid deed of fettlement made on the marriage of your oratrix's faid father with the faid A. in which he the faid M T. was a truftee; and he the faid N. T. did in and by the same answer to the said bill of the said 7. B the father declare and fay, that in case the said J. B the fon should die without issue and under age, the lands fettled on the iffue of the faid 7. B. the father first marriage, would come to the faid E's children as heirs of the body of the faid J. B. the father, a in and by the faid bill of the faid B. the father, and the faid N. T's answer thereunto, remaining as of record in this honourable court, doth and will mor fully appear: But the faid deed of fettlement, and the faid other deeds and writings, have been a along concealed from your oratrix, and he the fair N. T. as he was a truftee named in the faid fettle ment

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ment, ought to have discovered and delivered up the same unto your oratrix, and thereby it doch and will appear, that your oratrix and her faid fifters M. and E. are tenants in tail of and in the faid premisses, and that the same ought to be divided between them; and if the faid deed of settlement is not now to be produced, the same hath been fraudulently torn, burnt or destroyed, but how or when, or by whom, he the said N. T. doth refuse to discover. mo therefore, that they the said N. T. and R. P. and M. his wife, and J. G. and E. his wife, may answer all and every the matters and things herein before charged by way of supplement, and that he the faid N. T. may discover and set forth, whether, as he knows or believes, he at any time, and when, and how long, had the faid deed of fettlement in his custody, or power, or any other, and what deed, paper or writings to the effect or purport herein before mentioned, and what is become of such deed of fettlement, and all other the deeds, papers and writings before mentioned, or any or either, and which of them, as he the faid N. T. knows or believes, and when he last faw the said deed of settlement, or the faid other deeds, papers and writings, or any or either, and which of them; and that the faid deed of fettlement, and the faid other deeds, papers and writings may be delivered up fafe and uncancelled, and that your oratrix may be relieved in the premisses as the nature and circumstances of her case shall require; May it please your Lordship, &c.

A bill of revivor, and supplemental bill.

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acting executors and trustees named in the last will and testament of H. P. late of - in the country of — Esq; deceased, That your orators did in o about Trinity term - exhibit their bill of complaint into this honourable court against F. S. Efo A. S. Efq; W. S. Efq; Sir E. S. Bart. W. P. Efq formerly called W. B. Efq; W. F. Efq; T. F. Efg and M. his wife, late wife of the faid H. P. de ceased, H. G. Esq; and W. P. Gent. defendant (amongst other things) for a discovery of the rea and personal estate of the said H. P. and in particular what real estate he purchased after the date of his faid will, and for the directions of the court touch ing the trusts created by the faid H. P's faid last wil and codicil; and the faid defendants being dul ferved with process for that purpose did appear to your orators faid bill, and the faid defendants F. S W. P. T. F. and M. his wife, H. G. and W.P. put in their answers thereto; to which said answer of the faid defendants F. S. W. P. T. F. and M his wife, H. G. and W. P. your orators replied, and issue was thereon joined, and divers witnesses wer examined in the faid cause, and their deposition duly taken and returned, as by the faid bill, an fwers, replication and depositions of witnesses, allo them remaining duly filed and of record in this ho nourable court, relation being thereunto had, may more fully and at large appear. And your orator further shew unto your Lordship, that before the faid defendants Sir E. S. A. S. and W. S. put in any answer to the faid bill, or the faid cause received a hearing, the faid W. P. died intestate on or about the — day of — and the faid A. S. also died on or about the — day of — in the year whereby the faid fuit as to them became and i abated; and your orators further shew, that J. P. of - Gent. hath taken out letters of administra tion to the faid W. P. out of the court of the arch deacon

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deacon of — in the faid county of — and your orators are thereby become intitled to have the faid fuit and proceedings revived against the said 7. P. and to have the same benefit thereof, and relief against him as they should or might have had against the faid W. P. (unless the faid J. P. can shew good cause to the contrary;) and the said J. P. ought to admit affets of his faid Intestate come to his hands, to answer any demands your orators have against the estate of the said W. P. or else to set forth a particular and true account of his faid intestate's estate. and how the fame hath been applied and disposed of. And your orators further shew (by way of supplement,) that the faid H. P. having contracted for or purchased the manors of —— and —— and ——, and the manor-house called - and other lands and tenements thereunto belonging, which was and were formerly the estate of T. B. Esq; it is pretended the same was so done after the date of the will and codicil, or some of them; and the said Sir E. S. laying some claim thereto, it is also pretended that the faid Sir E. S. and F. S. conveyed their right and interest therein and thereto to the said A. S. who, as is pretended, in his life-time duly made and published his last will and testament in writing, and therein and thereby devised part of the said estate late of the faid A. B.'s to J. G. of —— in the county of — Gent. and his heirs, or to L. G. wife of the faid J. G. and who was the faid A's fifter, and her heirs, or to the faid L. G. for her life, remainder to A. G. her fon by the faid 7. G. and his heirs; and other part of the faid late A. B.'s estate called P. to Mrs. H. S. another fifter of the faid A. S. and her heirs; and the other part of the said eltate, to wit, — manor and lands to M. S. and H.S. his fifters, and whom, as it is also pretended, he made executrixes of his faid will, either to them and their heirs, or in trust to pay his debts, the re-Y 2

sidue thereof, after payment of his debts, to the faid W. S. his brother and his heirs: and the faid Sir E. S. W. S. H. S. J. G. and L. his wife, and A. G. their fon, M. S. and K. S. pretend some right or title in or to the faid lands and premisses late Mr. B.'s; yet they refuse to discover what their said claims are, or by what deed or title they claim, or who is in possession thereof, and of every part thereof; and tho' your orators are advised, to the end it may be determined by this court, whether all or any part of the faid late Mr. B's faid manors, lands and estate is part of the trust-estate intended to be settled by the faid H. P's will or codicils, and for that purpose the said Sir E. S. ought to set forth what right or title he claims therein or thereto, or to any part thereof, if any; and for that purpose he ought to answer this bill, as well as your orators original bill; and the faid W. S. ought fo to do, he claiming in reversion under the faid H. P's will, as well as under the faid A. S's will; and the faid H. S. J. G. and L. his wife, A. G. their fon, and M. S. and K. S. the executors of the faid A. S. ought also so to do, if they or either of them claim any right or title thereto, or interest therein, or in or to any part thereof. To the end therefore, that the faid Sir E. S. W.S. H. S. M. S. K. S. J. G. and L. his wife, and A. G. their fon, may so do, and that the faid suit and proceedings may fland revived, and be in the fame plight and condition as they were in at the time of the death of the said W. P. or that the said J. P. may shew cause to the contrary, and may admit as fers of his faid intestate sufficient come to his hands to answer your orator's demands; or may set out a particular, full and true account of his faid intestate's estate and effects, and how the same hath been paid applied and disposed of; May it please your Lordthip, &c.

Plaintiffs pray process to revive and answer.

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HUMBLY complaining, sheweth unto your Lordship, your oratrix S. B. of — in the county of — widow, only fifter and heir at law of T. B. late of — in the faid county, Gent. deceased, administrator of all and singular the goods and chattels, rights and credits of the faid T. B. and also the aunt, heir at law of M. B. late of aforefaid spinster, deceased, who was the only daughter of the faid T. B. that your oratrix in or about Michaelmas term, which was in the year of our Lord - exhibited her bill of complaint into this honourable court against H. T. T. P. J. L. H. B. J. B. S. B. E. D. D. S. E. R. A. S. E. P. D. H. and J. W. (amongst other things) to be relieved touching the matters therein contained, and to fet aside the pretended will of the said M. B. and that the fame might be delivered up to your oratrix to be cancelled, and that the defendants might release all their right or pretence of right or title to the real or personal estate of the said M. B. and might account for the rents and profits thereof, and that the faid confederates S. P. H. and W. might affign the terms in them vested to such trustee or trustees as your oratrix should appoint. To which bill all the faid defendants (being ferved with process of Subpana) appeared, and the faid H. T. T. P. J. L. H. B. J. B. S. B. E. P. D. S. E. R. A. S. E. P. D. H. and J. W. feverally put in their answers thereto, and your oratrix replied to all the faid defendants answers (except the answers of the faid defendants P. H. and W.) and rules were given to pass publication, which was hy order of this court enlarged to the first day of next Easter term — but no witnesses are yet examined, and the cause is set down to be heard before your Lordship, as in and by

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by the faid bill, answers and proceedings thereupon had, remaining as of record in this honourable court, relation being thereunto had, may more fully and at large appear: And your oratrix further shew. eth unto your Lordship, that before any other proceedings were had in the faid cause, (that is to fav) about the — day of — last the said A. S. died, by means whereof the faid cause and proceedings therein as to him became and are abated. And your oratrix further sheweth unto your Lordship, that the faid A. S. did in his life-time make his last will and testament in writing, dated on or about the 1st day of May - and did thereof constitute and appoint M. S. of M. in the county of - Esq; his brother, fole executor and refiduary legatee, who hath fince his faid brother's death duly proved the faid will, and accepted of the faid executorship, and your oratrix is thereby intitled to have the same benefit and relief against the said M. S. as your oratrix should or might have had against the said A. S. To the end therefore, that the faid fuit and proceedings may stand revived, and be in the same plight and condition against the said M. S. as the same were at the death of the faid A. S. and that your oratrix may have the same benefit thereof, or that he the said M. S. may shew good cause to the contrary; May it please your Lordship to grant unto your oratrix his Majesty's most gracious writ or writs of Subpana to be directed to the faid M. S. thereby commanding him, &c.

A bill by an administratrix for an account; and to revive a decree, and carry it into execution.

Lordship, your oratrix A. C. widow and relict of P. C. late of — in the county of — Esq; deceased, and mother, and administratrix of the goods

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goods and chattels, rights and credits of P. C. deceased, who was eldest son and heir of the said P.C. your oratrix's late hufband, deceafed, by your faid oratrix, That fome time in or about the --- day of ____ your oratrix and W. C. the younger fon of the faid P. C. your oratrix's faid late husband deceased, by your said oratrix, an infant then under the age of twenty-one years, (that is to fay the age of ---) by your faid oratrix, his mother and next friend, exhibited their bill of complaint in this honourable court against the said P. C. as the eldest fon and heir of the faid P. C. your oratrix's faid late husband, by your faid oratrix, he being then an infant under the age of twenty-one years, L. R. W. W. W. L. and G. C. and W. C. younger brothers of your oratrix's faid late husband, setting forth, (amongst divers other matters and things,) that previous to the marriage of your oratrix with the faid P.C. your oratrix's faid late husband deceased, the faid P. C. in confideration of the faid marriage, and of your oratrix's marriage portion, by certain articles bearing date the - day of - and made or mentioned to be made between the faid P. C. of the one part, and the faid W. L. and your oratrix, of the other part, he the faid P. C. did thereby covenant for himself, his heirs, executors and adminifirators, immediately after the folemnization of fuch marriage, to fettle the manor of - with the appurtenances, and divers other lands and hereditaments therein particularly mentioned, in the parishes of — and — in the faid county of — to the use of himself for life, without impeachment of waste; remainder to trustees to support contingent remainders; remainder to the use of the first and other fons of him the faid P. on the body of your oratrix to be begotten in tail male; with remainder to L. C. fince deceased, brother of the said P. C. and all others the brothers of the faid P. C. according

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to their feniority fuccessively in tail male, with remainders to the right heirs of the faid P. C. And also setting forth, that soon after the execution of the said articles the said marriage took effect, and that in March — the faid P. C. your oratrix's faid late husband died, leaving your oratrix his widow, and the faid P. fince deceased, his eldest fon, and the faid W. C. his only children by the faid mar. riage then living, having first duly made and pub. lished his last will and testament in writing, bearing date the --- day of --- and therein taking notice of his faid marriage articles, confirmed the fame, fave and except the uses to his brother G. and his iffue in tail, which he revoked, as therein is mentioned: and devised all his manors, houses, messuages, rectories, advowsons, lands, tenements, and hereditaments, and the reversion thereof, with all his estate therein, unto the faid L. R. and W. W. their heirs and affigns, in trust for the performance of the faid marriage articles (fave as before excepted) and for the intents and purposes therein, and in the faid will fet forth; and particularly that the faid trustees and the furvivor of them, and the executors of fuch furvivor, should have the sole direction of all his real estate, to let and set the same, and receive the rents, iffues and profits thereof, until one of his fons should attain the age of twenty-one years, and should apply the rents and profits of all his real estate, fave such as should be applied in the maintenance and education of his faid fon P. C. or his younger fon (in case he should survive him) for payment of all or part of the principal or interest of any mortgages or incumbrances upon his faid estate, or any part thereof, and made your oratrix fole executrix of his faid will, who after his death duly proved the same, and took upon herfelf the burthen of the execution thereof; and further fetting forth, and praying in and by the faid bill to be relieved as therein is prayed. And you!

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your oratrix further sheweth unto your Lordship. that the faid defendants, being ferved with process. did appear to and put in their feveral answers to your oratrix's faid bill, and the faid L. R. and W. W. W. L. G. C. and W. C. thereby feverally and refpectively admitted, that fuch articles were duly executed, and that fuch marriage was had, and that the defendant P. C. fince deceased, and the said plaintiff W. C. were the only iffue thereof; and that the faid testator died in March — having made such will as aforesaid, and thereof your oratrix sole executrix; but the defendant R. denied he had received any of the rents and profits of the faid teftator's estate since his death; but the defendant W. admitted that he had received the same, and submitted to account as the court should direct: And the faid P. C. the infant put in his answer to the faid bill, by T. B. his guardian, and thereby, (amongst other things,) submitted his interest in the premisses to the care and protection of the court. And your oratrix further sheweth unto your Lordship, that the faid cause being thereupon at iffue, and witnesses examined on both fides, the same came afterwards to be heard, to wit, the 20th day of February in the fixth year of the reign of his present Majesty King George the second, before the then Master of the Rolls; and thereupon it was (amongst other things) declared and decreed by his Honour, that the faid teflator's will was well proved, and that the trufts thereof ought to be performed; and that the said manor of A. and lands agreed to be fettled by the faid marriage articles, were to go according to the limitations of the faid marriage articles, discharged of the faid testator's debts, and that Mr one of the Masters of this honourable court should take an account of the faid testator's debts and legacies, which were to be paid first out of the said fam of - part of your oratrix's portion; and the residue

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refidue thereof was to be raifed and paid out of the rents and profits, or by fale or mortgage of the faid testator's real estate, by the said articles and will particularly appropriated for that purpose, with the ap. probation of the faid mafter; and any deficiency therein was to be made good out of the other part of the testator's real estate not in settlement to your oratrix; and that a fit and proper person should be appointed to receive the rents and profits of all the faid testator's real estates; and the said master was to fee what was proper to be allowed for the mainte. nance of the defendant P. C. and the plaintiff W. his brother respectively, as well for the time past, as to come, and to flate the fame to the court, whereupon fuch further order should be made as should be just; and what was to be allowed for their respective maintenance, was to be paid to your oratrix their mother, out of the rents and profits of the faid estates so long as she could maintain them, and until further order of court to the contrary; and all other proper directions were given for the taking the faid account; as by the faid bill and answers, and the other proceedings in the faid cause, and the said decretal order made upon the hearing thereof, remaining as of record in this honourable court may more fully and at large appear, and to which your oratrix humbly craves leave to refer herself. And your oratrix further sheweth unto your Lordship, that after hearing the faid cause, and making the faid decree, to wit, in or about the month of December — the faid defendant P. C. the eldest son and heir of the said testator P. C. departed this life intestate, and without iffue, as did also the defendant W. W. in or about the month of --- by reason whereof your oratrix is advised, that the said cause, and the proceedings and decree had therein, as to them the faid P. C. and W. W. became and are abated. And your oratrix further shews unto your Lordship, by way of

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of supplement to her said former bill, that upon the death of the faid testator P. C. the said manor of A. and lands and premisses of W. agreed to be settled in and by the faid marriage articles, as therein and herein before is mentioned, and which were difcharged by the faid decree from payment of the faid testator's debts as aforesaid, did by virtue of the said marriage articles, immediately upon the death of the faid P. C. your oratrix's late husband, come to the faid P. C. as eldeft fon and heir of the faid marriage, and his heirs male, and that he became intitled to the rents and profits thereof from the death of his faid father to his own death, and upon his death the faid estates came to the faid W. C. the testator's faid fecond fon, and one of the defendants herein after named as tenant in tail by virtue of the faid articles; and your oratrix further sheweth, that the faid W. W. was appointed receiver of the rents and profits of the said testator's real estates pursuant to the faid decree, and, as your oratrix is informed, the faid W. W. till the time of his death, and the faid L. R. or one of them, not only received the rents and profits of the faid testator's real estate, subjected to the payment of his debts, but also of the hid fettled estate which belonged only to the said P. C. her fon, and applied the same promiscuously with the rents of the faid other estates in payment of the faid testator's debts and legacies, or for some other uses and purposes for which the same were no ways applicable; and your oratrix further sheweth, that the faid W. W. fometime before his death duly made his last will and testament in writing, and thereof appointed C. B. of M. in the faid county of N. Gentleman, and R. H. of the same place, Gent. executors, who have proved the same, and possessed themselves of his personal estate; and since the decease of the faid W. W. L. L. of - in the faid county of ____ Gentleman, hath been appointed receiver

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of the said testator P. C.'s said real estates; and your oratrix further sheweth, that there was a great arrear of rents and profits due to the faid P. C. her fon at the time of his decease, for the said manor of - and the faid lands and premisses at - agreed to be fettled as aforefaid, and then unreceived and in the hands of the feveral tenants, who held and rented the fame, amounting to the fum of - and upwards, and that some part thereof since the deceases of the faid intestate P. C. and the faid W. W. hath been received by the faid C. B. by virtue of or under pretence of some order or direction for that purpose, and that the other part thereof hath been received by the faid L. L. the faid receiver, and the faid L. R. the faid furviving truftee, or fome or one of them, and which they the faid C. B. L. L. and L. R. pretend to have paid and applied towards the payment of his the faid P. C. the tellator's mortgage, and other his debts due and payable out of the other part of his faid real effate, in the pleadings in the aforesaid cause mentioned, contrary to the said decree made upon the hearing thereof as aforesaid; and your oratrix further sheweth, that soon after the death of the faid P. C. her faid fon, letters of administration were granted to her out of the prerogative court of York, and thereupon, and by virtue thereof, the became well intitled to all and fingular the rents and profits of the faid manor of A. and lands and premisses at W. received by the said W. W. the said late receiver, and the faid L. R. which accrued due for the same estates after the death of the said testator P.C. or which were received by them after making the faid decree in the faid intestate's life-time, over and and above his maintenance, and all the arrears thereof, which were in the hands of the tenants and unreceived, and due to the faid P. C. your oratrix's fait late fon at the time of his death, and ought to have received the fame, and to have had an account thereof, our

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thereof, and the same ought to be distributed in moieties between your oratrix and her faid fon W. as by the fame letters of administration in the custody or power of your oratrix and ready to be produced to this honourable court may appear. And your oratrix humbly infifts, that by virtue of the faid letters of administration, your oratrix stands in the place of the faid P. C. her faid fon deceased, as to the faid rents and profits received of his faid estate as aforesaid in his life-time, and which were due to him and in arrear, and received as aforefaid fince his death, and thereupon is intitled to have the aforefaid decree made upon the hearing of the faid cause revived and carried into execution, and to have the benefit of all the faid proceedings, such manner as this honourable court shall direct. And your oratrix further sheweth, that they the said W. C. her fon, C. B. R. H. L. L. and L. R. have entered into a combination and confederacy how to defeat your oratrix of the faid moiety or half-part of the faid rents and profits of the faid manor of A. and lands and premisses at W. which were received by them the faid W. W. and L. R. in the life time of the faid intestate P. C. over and above his main. tenance, and which were due and in arrear to the faid intestate P. C. her said son at the time of his death, and which have fince his death been received by the faid C. B. L. L. and L. R. or some of them, and to all which, and an account thereof, your oratrix is well intitled as aforefaid; and thereupon the faid confederates, and especially the confederates C. B. R. H. L. L. and L. R. refuse to give your oratrix any account thereof, or to pay her the same; and they the faid C. B. and R. H. pretend that the faid W. W. did not leave affets sufficient to answer and make good to your oratrix what he fo received; and the faid W. C. pretends that he is intitled to the whole of the rents and profits of the faid manor of

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A. and the lands and premisses at W. which were received by the faid W. W. and L. R. in the life. time of the faid intestate P. C. over and above his maintenance, as also to the whole of the rents and profits which were in arrear and due to the faid intestate P. C. at the time of his death for the same. or that the same ought to be applied in discharge of the faid P. C. his late father, the testator's debts: whereas your oratrix doth expresly charge as above. and that the faid W. C. was intitled to one moiety or half-part thereof only, and that your oratrix is well intitled as aforefaid to the other moiety or half-part thereof; and your oratrix doth allo infift, that as the faid manor of A. and the lands and premisses at W. agreed to be settled as aforefaid, were by the faid decree discharged from the payment of the faid testator P. C.'s debts, that therefore the faid rents and profits thereof, which were due to the faid intestate P. C. at the time of his death, and received as aforefaid, ought not to go and be applied towards the payment thereof, but ought to be equally divided share and share alike, after just deductions and allowances made out of the same between your oratrix and him the faid W. C. her fon. In tender consideration whereof, and to the end that the faid confederates, and every of them, may answer all and fingular the premisses herein before added by way of supplement, as fully, particularly and diftinctly, as if the same were here again repeated and interrogated, and more especially that the said C. B. and R. H. L. L. and L. R. may fet forth a true and just account of all and fingular the rents and profits of the faid manor of A. and lands and premisses at W. which they the said W. W. and L. R. or either of them, or which any other persons by their, or either of their order, or for their or either of their use, did receive in the life-time of the said intestate were

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intestate P. C. and also a just and true account of the arrears thereof due to him the faid intestate at the time of his death, and which fince his death have been received by the faid C. B. L. L. and L. R, or any of them, or any other person or persons by their, or any of their order, for their or any of their use or uses, separately and distinctly in each and every of the faid years they fo received the fame; and how much they deducted, paid, or allowed out of the same in each and every of the said years, separately and distinctly, and for what, and upon what account, and how much the fame amounts unto in the whole after such deductions, and how and in what manner, and to and for whose use and benefit they paid and applied the same, or otherwise disposed thereof; and that the said C. B. and R. H. may either admit affets of their faid teftator fufficient to answer your oratrix's demand upon the faid W. W.'s estate, or else that they may set out a true and perfect inventory and particular of all and fingular his goods, chattels, rights and credits, and how the fame hath been paid, applied or otherwise disposed of; and that the said confederates may fet forth, whether your oratrix hath not fince the death of the faid P. C. her faid son, taken out letters of administration to all and fingular his goods, chattels, rights, credits and personal estate whatfoever; and whether your oratrix is not well intitled to have a just account of the said rents and profits, and in her own right intitled to one full undivided moiety or half-part of all and fingular the faid rents and profits of the faid manor of A. and the lands and premisses at W. received by the faid W. W. and L. R. during the life-time of the faid intestate P. C. over and above his faid maintenance, and all the arrears thereof which were due and in arrear to him the faid intestate P. C. at the time of his death; and that they the faid C. B. R.

R. H. L. L. and L. R. may set forth their reasons why they refuse to account with and pay to your oratrix the fame; and that they may be compelled forthwith to come to a just and fair account with your oratrix, and to pay to your oratrix what shall appear to be due to her upon fuch account; and that the faid decree may be revived and carried into execution; and that your oratrix may have the benefit of all the aforefaid proceedings and decree, in fuch manner as this honourable court shall direct: May it please your Lordship, &c.

An information by the attorney general, at the relation of the rector and churchwardens for money given to charitable uses.

To the Right Honourable, &c.

Nforming sheweth unto your Lordship, J. W. Esq; his Majesty's attorney general, at and by the relation of G. W. clerk, rector of the parish of R. in the county of S. and of W. P. and G. E. church-wardens of the same parish, on behalf of themselves and the rest of the parishioners and inhabitants of the same parish, That H. F. late of W. in the faid county of S. bart, deceased, in his life-time, and at the time of his death, was feiled in fee simple of and in divers manors, messuages, farms, lands, tenements and hereditaments, situate and being within the county of K. and the feveral counties of K. E. and S. or some of them, or elsewhere within that part of Great Britain called England, and the faid Sir H. F. was also possessed of, interested in or intitled to a very considerable perfonal estate, and being minded to dispose of great part of his estate for several charitable purpoles, he the faid Sir H. F. did some time before his death

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duly make and publish his last will and testament in writing, bearing date the ——— day of in the year of our Lord - and did thereby nominate and appoint Sir W. T. Bart. C. S. A. Esq; the reverend Mr. A. D. T. G. and C. W. of -Esq; his executors, in trust for the performance of his faid will, and thereby gave and devised all, Ec. [Here recite the devises in the will] as by the faid will, could his Majesty's attorney general or the faid relators produce the fame, might more fully appear. And his Majesty's said attorney general by the relation aforesaid further sheweth, that the faid will of the faid Sir H. F. was duly figned, staled, published and declared by the faid testator as and for his last will and testament, in the prefence of, and attested by, three credible witnesses; and the faid testator, at the time of the date and execution of the faid will was of found and perfect memory and understanding; and he the said testator on or about the ——— day of —— now last past departed this life without iffue, and without altering or revoking his faid will, and was at the time of his death possessed of, interested in or intitled to a very great and confiderable real and perfonal estate, which personal estate amounted to the value of ____ and upwards, and was sufficient to pay and fatisfy all his debts and legacies, and funeral expences, with a great overplus. And his majesty's said Attorney General by the relation aforesaid further sheweth, that soon after the said testator's death the faid executors and trustees proved the faid will in the prerogative court of Canterbury, and have taken upon themselves the burthen and execution thereof, and have possessed themselves of all or the greatest part of the goods, chattels and personal estate of their said testator, and ought to exhibit a true and perfect inventory and particular thereof, and also an account in what manner they Vol. II. Z.

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have paid, administred, disposed of or applied the fame, and to whom, and in payment of what debts and legacies; and they the faid truftees and executors ought also with all convenient speed to build, erect and endow the faid church or chapel and charity school, according to the direction of the said will, and in all other things to perform and execute the pious and charitable intentions and directions of the faid teftator, according to the true intent and meaning of his faid will. But now to it is, may it please your Lordship, that the said executors and trustees Sir W. T. C. S. A. T. J. and C. W. combining and confederating with F. J. and M. and also with G. T. the younger, and H. T. of 7. in the county of - G. T. of, &c. and R. T. of, &c. and S. K. of, &c. who are the cousins and heirs at law of the faid testator Sir H. F. the faid G. T. the younger, and H. T. being the only fons and heirs in gavelkind of H. T. Esq; deceased, who was the eldeft fon and one of the coheirs in gavelkind, and the faid G. T. and R. T. being the youngest fons and the other coheirs in gavelkind of E. T. deceased, late wife of H. T. of 7. aforefaid, Esq; and the surviving daughter of E. L. also deceased, late wife of W. L. Esq; deceased, only fifter and heir of A. L. fon and heir of the faid E. L. which faid E. L. was one of the two fifters of W. F. the elder, late of W. aforesaid, deceased, late father of the faid Sir H. F. and the faid S. K. the only surviving daughter and heir of M. S. late wife of K. S. late of E. G. in the parish of S. in the county of K. Gent. deceased, which said E. S. was the other fifter of the faid W. F. the elder; and the faid 7. B. only daughter and heir of M. B. deceased, late wife of C. B. Esq; who was the only daughter and heir of W. F. the younger, decealed, who was the eldest son of the said W. F. the elder by --- his first wife, and brother of the half blood

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blood of the faid testator, together with divers other persons unknown to his Majesty's said Attorney General or the faid relators, whose names when difcovered, his Majesty's faid Attorney General prays they may be inferted in this information, and they made parties to the fame with apt words to charge them; they the faid executors pretend and give out in speeches sometimes, that the said testator did not leave affets sufficient to pay all his just debts, legacies and funeral expences, and also to make good the faid feveral charities and charitable donations given and directed in and by his faid will; whereas his Majesty's Attorney General charges, that the faid testator died possessed of a very considerable personal estate, which, if rightly applied, and duly improved, will be much more than sufficient to satisfy all the testator's debts, legacies and funeral expences; and particularly his Majesty's Attorney General charges, that the faid executors, or fome of them, were indebted upon bond or otherwise to the faid testator at his death in very great sums of money, which ought to be paid in and applied towards payment of the faid testator's debts and legacies; but they refuse or neglect to pay in the said debts, and fuch of them as are so indebted sometimes give out, that their debts are extinguished by the faid testator having made them executors of his will, and that they are not now liable to the payment thereof; whereas they well know, and so his Majesty's Attorney General and the said relators infift, that the faid executors are only appointed executors in trust for the performance of the testator's will, and that it never was the testator's intention, by making them executors, to extinguish any debt or debts which any of them might owe him at the time of his death, and that he or they should retain the fame to their own uses, nor is there any colour for them to fet up any such pretence; and as to Z 2 the

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the pretence, that the faid testator's personal estate is not fufficient to fatisfy all his debts, legacies and funeral expences, his Majesty's Attorney General and the faid relators do also infift, that in case there shall appear to be any such deficiency of the said testator's personal estate, the same ought to be made good out of his real estate, he having by his faid will expresly devised all manors, lands and real estate whatsoever, to his said executors and trustees. and their heirs, to the uses and upon the trusts mentioned in his faid will, and thereby, as his Ma. jefty's Attorney General and the relators infift, he has subjected all his said real estate to the payment of his faid legacies, and particularly of the faid charities; but then it is pretended by the faid G. T. the younger, and H. T. the grandfons, G. T. R. T. and S. K. the heirs at law, that the faid testator's real estate is descended upon them, and that the faid will was not duly executed, as by law it ought to be, for the devising of lands and tenements, or at least that it will be incumbent upon his Majesty's Attorney General and the said relators, to make due proof of the execution thereof; at other times it is pretended by the faid executors, that the faid testator having by his faid will directed, that his truftees should not apply any money arifing from his estates given to his said charities in the faid parish of R. either to a minister, schoolmaster, or poor children, until seven years were expired after his decease, his Majesty's Attorney General and the faid relators ought not to make any demands upon them the executors until after the expiration of the faid seven years; whereas the faid executors well know, that the faid testator has declared his will to be, that his trustees might at any time after his decease erect and build the said church or chapel, and school-house, or either of them; and therefore they the faid executors ought, as foon as may

may be, to purchase a proper piece of ground, whereon to erect the faid church or chapel, and to fet about the building the same with all convenient fpeed; and they ought to come to an account for the faid testator's personal estate, and a sufficient part thereof ought to be appropriated and fet apart for answering and making good the said testator's other charities, when the faid feven years shall be expired, and fo the faid executors fometimes admit; but then they pretend they are unwilling to act in any matter relating to the faid charities without the direction and indemnity of the decree of this honourable court; and the faid F. J. and M. his wife, do also insist, that in regard the said testator having by his faid will directed, that his executors and trustees shall maintain and keep up his gardens belonging to his faid capital meffuage at S. they the faid executors ought out of the faid testator's personal estate to pay and expend what the said F. J. and his wife shall think fit to lay out and expend from time to time in and about the faid gardens and paddock; whereas the faid testator has only directed, that 201. a year shall be paid to the said J. C. the testator's gardener, for looking after the said garden and paddock, and no greater fum ought to be paid by the faid trustees for keeping up the faid gardens, than the faid 201. a year, and fuch yearly fum, his Majesty's Attorney General and the relators infift ought to be paid out of that part of the faid testator's real estate, which is devised to the said M. J. but the said F. J. and his wife insist, that the charges of keeping up the said gardens shall be paid out of the faid testator's personal estate, and not out of any part of his real estate devised to her, to the great prejudice and diminution of the faid In consideration whereof, and forafmuch as charitable bequests and donations can only be effectually established and specifically carried into execution

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execution by the aid and affiftance of a court of equity: To the end therefore, that the faid confederates may, upon their respective corporal oaths. true and perfect answer make to all and singular the premisses, as fully and distinctly as if the same were here again particularly repeated and interrogated, and especially may set forth and discover, as they respectively know or believe, whether the faid Sir H. F. did not make his last will and testament in writing, and thereby make fuch devifes or to fuch effect as are herein before fet forth; and whether the faid will was not duly executed by the faid Sir H. F. in the presence of, and attested by, three credible witnesses, and who by name; and may fet forth the same in the very words thereof; and whether the faid Sir H. F. did not die without iffue, and when he died; and that the faid defendants, the trustees and executors, may set forth a particular of all the manors, meffuages, lands, tenements and hereditaments, which the faid testator was any ways intitled to at the time of his death; and what estate or interest he had therein, and the yearly values thereof, and where the same are respective situate, lying and being; and whether they have not proved the faid testator's will, and taken upon themselves the burthen and execution thereof; and that they may fet forth a true inventory and particular of all the goods, chattels and personal estate not specifically devised, whereof the faid testator was possesfed, interested in or intitled unto at the time of his death, and the true values thereof, and what part thereof hath come to the possession of them the said executors or either of them, or of any other perfon or persons for their or either of their use; and how and in what manner, and in payment of what debts or legacies, and to whom, the fame or any, and what part or parts thereof, or the monies arifing by the fale of any part thereof, hath been paid, applied,

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applied, disposed of or administred; and whether the same is not sufficient fully to discharge and satisfy all his just debts and legacies, and funeral expences, and also the said charitable bequests and donations in the faid will; and that they may also set forth, whether they or some, and which of them, were not indebted to the testator at the time of his death in any and what fums of money, and how the fame were fecured; and that the faid F. 7. and M. his wife may fet forth the yearly value of the faid meffuages, lands and tenements devised to her the faid M. by the faid teftator's will, and that the faid executors may come to an account for the faid testator's personal estate, and may thereout pay the faid legacy of 50 l. bequeathed to the faid parish of R. to the church-wardens and overseers of the poor of the same parish for the purposes in the said will mentioned concerning the same; and that the said executors may also lay out and apply the sum of 1500 l. in the erecting and building a chapel or church and a charity-school in or near C. and A. aforefaid, according to the faid teftator's will, and in purchasing a proper piece of ground whereon to build the fame; and may also invest and lay out the feveral fums of 4000 l. 500 l. and 3000 l. in the purchase of lands of inheritance, according to the testator's will, for the several purposes therein mentioned; and that in the mean time the faid feveral fums, and all the rest of the said testator's perfonal estate not specifically devised, over and above what shall be sufficient to pay and satisfy all the testator's debts, legacies and funeral expences, may be placed out upon good fecurities at interest, for the augmentation of the faid charities, and that the witnesses to the faid will may be examined, and their testimony perpetuated; and that the said several charities and charitable donations may be settled and established, and all the trusts in the said tes-Z 4

tator's will be fully performed and carried into execution, according to the true intent and meaning of the faid will; and that fuch further and other relief may be had and obtained in the premisses, as to your Lordship shall seem agreeable to equity and good conscience; May it please your Lordship, &c.

Another information by the Attorney General for money given to charitable uses.

To the Right Honourable, &c.

filed, &c.

Information I Nforming sheweth unto your Lordship, - Knight, his Majesty's Attorney General, at and by the relation of F. W. clerk, vicar of the parish of — in the county of — and J. B. and J. C. churchwardens of the same parish, for and on the behalf of, &c. (as in the last information) That W. B. late of —— in the faid county - Esq; deceased, being in his life-time posfessed of a considerable personal estate, did on or about the —— day of —— which was in the year of our Lord 17 duly make and publish his last will and testament in writing, and thereby (among other things) gave and bequeathed the sum of 500%. to be raifed out of his personal estate, and directed that the same sum (when raised) should be paid unto T. W. of, &c. and J. B. of, &c. their executors and administrators, on trust to be by them the said T. W. and J. B. their executors or administrators (with all convenient speed) laid out part in building of a fmall school-house in the village of - in the parish aforesaid, together with a little house adjoining thereto, for a schoolmaster to live in, and directed that the purchase of the said ground and building should not exceed the sum of 200 l. and that the remaining 300 l. should be laid out in the purchase of land

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land or some real security, to be a maintenance and provision for the master of the said intended school, and the building of the faid school and school-house for the matter, and also the placing out of the said 200 l. for the maintenance of the faid mafter as aforefaid, was to be done by the advice and affiftance of the proprietor of L. and the vicar and churchwardens of the fairl parish of - for the time being, or any two of them, the proprietor of L. or the vicar of the faid parish of —— to be one; in which school the said testator directed, that so many boys of poor farmers, labourers and craftimen. of the faid village and parish of -- aforesaid, should be taught to read and write, and to continue so long at or in the said school, as the said proprietor of L. the vicar and churchwardens of the faid parish of —— or any two of them for the time being, should under their hands direct or appoint; And the faid testator also directed, that the said schoolmafter should be chosen by the majority of the vestry of the faid parish, the faid master having been first examined by, and approved of, by the vicar of the faid parish of —— for the time being, as a proper person to be chosen master of the said school, and that upon any misdemeanor of the master of the said school, the vestry of the said parish of —— should be called (the vicar and the churchwardens of the same parish for the time being, or any two of them, to be present) to examine into the same; and in case the master of the said school should be found guilty of any misdemeanor relating to the said school, that then the majority of the vestry of the said parish of (the proprietor of L. and the vicar and churchwardens of the fame parish of ---- for the time being, or any two of them being present) should proceed to remove and displace the said master from the faid school, and should proceed to elect and nominate (in the manner aforefaid), another master to fucceed

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fucceed him so removed and displaced; And his Majesty's Attorney General, by the relation aforefaid, further sheweth unto your Lordship, that the faid testator did in and by his faid will give to the poor of ____ the fum of 100 l. to be railed out of his personal estate, and to the poor of the parish of ____ the fum of 100 l. to be also raised out of his personal estate, whereof 100 l. was to be paid by E. B. (the faid tellator's executrix, and a defendant herein after named) to the churchwardens for the time being, of the respective parishes of - and - to be by them the fame churchwardens (by and with the confent of the minister and vicar of each parish for the time being) placed out at interest; and the said testator did by his said will direct, that the minister and vicar, and churchwardens of the faid respective parishes of ____ and _ or any two of them (the minister and vicar of each parish to be one) should distribute yearly, two days before Christmas day, the produce and interest that should arise from the said 100 l. among ten of such indigent and labouring families of each of the faid parishes of ____ and ___ as they shall judge to be most wanting of it; and of his said will the faid testator appointed his wife E. B. executrix; And his Majesty's Attorney General, &c. sheweth unto your Lordship, that the said W. B. by a codicil to his faid will, bearing date the --- day of ---appointed L. R. of, &c. a trustee for the purposes in his said will mentioned together with T. W. and J. B. the other trustees in the faid will named, as by the faid will and codicil, could his Majesty's Attorney General or the relators produce the same, might more fully appear; And his Majesty's Attorney General, &c. further sheweth unto your Lordship, that the said W. B. at the time of the date and execution of the faid will, was of found mind, memory and understanding, and that the faid

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faid W. B. some time after making his will and codicil as aforesaid (viz.) on or about the day of in the year of our Lord 17 departed this life without revoking or altering his faid will (fave only as to the nomination of the faid L. R. to be a trustee as aforesaid) and that upon the death of the said reflator, the faid E. B. proved the fame in, \mathcal{C}_c , and took upon her the burthen of the execution thereof; And his Majesty's Attorney General at, &c. further heweth unto your Lordship, that the said W. B. at the time of his death was possessed of, and intitled unto a confiderable personal estate, consisting of leafehold meffuages, &c. to the amount of 1. or to some other considerable amount sufficient to pay and fatisfy all his just debts, legacies, and funeral expences with a great overplus; And his Majefty's Attorney General at, &c. further sheweth unto your Lordship, that the said E. B. after the death of the faid W. B. not only got into her hands, cuftody or power, all or the greatest part of his perfonal estate, sufficient to pay all his debts, legacies, and funeral expences, with a confiderable overplus, but also entred upon his freehold estate called L. and is the proprietor thereof for the time being, and the faid F. W. &c. (all the relators) have oftentimes in a friendly manner applied to the faid E. B. to pay to the faid L. R. &c. (the trustees) the faid 500 l. to be by them applied to the purposes mentioned in the faid will of the faid W. B. and to affift them in carrying the charitable purposes of the said testator into execution; And his Majesty's Attorney General at, &c. further sheweth unto your Lordship, that the faid F. W. &c. (the relators) have oftentimes applied to the faid E. B. to pay to them the faid 100 l. fo directed by the faid testator's will to be paid to them as aforefaid, in order to apply the fame according to the faid testator's will, but the faid E. B. always refused and still refuses so to do, and

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and the faid L. R. &c. (the trustees) refuse to act in the faid trust reposed in them in and by the faid will, altho' often applied to by the faid F. W. &c. (the relators) for that purpose: What now so it is. may it please your Lordship, that the said E. B. &c. combining and confederating to and with divers perfons, to his Majesty's said Attorney General or the faid relators unknown, whose names when discovered, his Majesty's said Attorney General prays may be inferted in this information with apt words to charge them, the faid E. B. &c. now pretend and give out that, &c. [Here go on with the charge] All which actings, doings and pretences of the faid E. B. &c. and their confederates are contrary to all right, equity and good conscience, and tend to the great prejudice and diminution of the faid charities: In consideration whereof, and for as much as charitable bequefts and donations can only be effectually established, and specifically carried into execution, by the aid and affiftance of a court of equity; To the end therefore, that the faid E. B. &c. (and their confederates) as discovered, may upon their feveral corporal oaths true and perfect answer make to all and fingular the premisses, as if the fame were here again repeated and interrogated, and more especially, that the said E. B. &c. may set forth and discover (as they respectively know or believe) whether the faid testator did not make such will and codicil in writing of fuch dates as aforefaid, and thereby make fuch devises or to fuch effect as are herein before fet forth, and whether the faid W. B. did not depart this life without revoking his faid will and codicil, and whether the faid W. B. did not appoint the faid E. B. fole executrix of the faid will, and whether she hath not proved the same, and in what court, and if she did not possess herself of the faid testator's personal estate, and whether the same was not more than sufficient to pay all the testator's just

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the me or's uft iust debts, legacies and funeral expences, and whether she is not proprietor or owner of L. and that the faid E. B. may admit affets sufficient to pay the faid charitable legacies, and that the faid trufts in the faid will relating to the faid charities may be carried into execution, under the directions of this honourable court, and that the faid L. R. &c. (the truftees) may act in, or assign their trust, and that the faid E. B. may pay to them, or to fuch persons as this honourable court shall direct, the faid 500 l. and inwrest for the same from the time she last paid the fame, to be applied to the charitable purposes mentioned in the will of the faid W. B. and also may pay to the faid 7. B. and 7. C. the present churchwardens of the faid parish of ---- the faid 100 l. and interest for the same from the time she the said E. B. last paid the same, to be applied to the said charitable purposes mentioned in the faid W. B's faid will, and that fuch further and other relief may be had and obtained in the premisses, as to your Lordhip shall feem agreeable to equity and good conscience; May it please, &c.

The answer of the executrix to the last information, wherein she insisted upon the Stat. of the 9 Geo. 2. intitled an act to restrain the dispositions of lands, whereby the same became unalienable.

HIS defendant, saving and reserving to her-self now and at all times hereafter, all and all manner of benefit and advantage of exception to the insufficiencies, uncertainties and other imperfections and defects of the faid information for answer thereunto, or unto so much thereof as this defendant is advised is any ways material or necessary for her this defendant to make answer unto, she this defendant answereth and faith, That she believes and admits it to be true that the faid relator F. W. is vicar of the parish church of — in the county of — and that the faid relators J. B. and J. C. are churchwardens of the faid parish of - in the faid information mentioned; and this defendant believes and admits it to be true that W. B. late of --- deceased in the said information named, was in his life-time and at the time of his death possessed of a confiderable personal estate, and being so possessed he did on or about the —— day of —— which was in the year of our Lord 17 make and duly publish his last will and testament in writing of that date, and did therein and thereby (amongst other things) give and bequeath the fum of 500 l. to be raised

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raised by and out of his personal estate, unto T. W. and J. B. of, &c. two other defendants in the faid information named, their executors and administrators, Apon trust that they should lay out part thereof in building a fmall school-house in - with an house adjoining for a school-master to live therein, and did thereby direct that the purchase of the ground and expence of building should not exceed the fum of 200 l. and the remaining 300 l. he the faid W. B. did thereby will and direct should be laid out in the purchase of land or some real security, to be a maintenance and provision for the master of the said school; all which the said testator did by his said will appoint to be done by the advice and affent of the proprietor of L. and the vicar of the said church of - and the two churchwardens of the faid parish of —— for the time being, or any two of them, whereof the proprietor of L. aforesaid, or the faid vicar for the time being, to be one; in which school the said testator did direct such boys to be taught in fuch manner, as therein and in the faid information particularly mentioned, and the faid teftator did likewise by his faid will give such directions concerning the choice and removal of the faid mafter of the faid school, as therein and in the faid information particularly mentioned, and the faid W. B. did by his faid will give to the poor of the faid parish of ——— to be also raised out of his personal estate the sum of 100 l. to be paid by his executrix to the churchwardens of the faid parish, who (with the consent and approbation of the vicar of the said parish) he thereby directed should place the same out at interest for such purposes, as therein and in the faid information particularly mentioned, and of his faid will the faid testator did appoint this defendant his widow and relict sole executrix; and the said W. B. did by a codicil to his faid will by him duly made and published, and bearing date the --- day of

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- which was in the year of our Lord 17 appoint L. R. of, &c. (another defendant in the faid information named) a truffee for the purposes in the faid will mentioned, together with the other truftees therein named; and this defendant faith, that the faid W. B. did depart this life on or about the time in the faid information for that purpose mentioned. without revoking or altering his faid last will and testament any further or otherwise than by the faid codicil as aforefaid; and this defendant admits it to be true, that foon after the death of the faid teflator (that is to fay) on or about the —— day of this defendant did prove the faid will and codicil of the faid teffator in the prerogative court of the Archbishop of Canterbury, being as this defendant apprehends and believes the proper ecclefiaftical court, as by fuch will and codicil or the probate thereof, to which when produced this defendant craves leave to refer, may more fully appear; And this defendant admits that the has taken upon her the burthen of the execution of the faid will and codicil, and this defendant further faith, that she admits it to be true, that the faid W. B. was in his life-time and at the time of his death possessed of, or intitled to a confiderable personal estate fully sufficient to pay and fatisfy all the just debts and funeral expences of the faid testator, and also all the legacies given and bequeathed by his faid will; and this defendant further faith that she admits it to be true, that she did soon after the death of the said testator get into her hands, custody or power, so much of the faid personal estate as was fully sufficient to pay all the just debts and funeral expences of the faid testator, and also all the legacies given by his said will; and this defendant also admits it to be true, that she did, upon the death of her said husband, enter upon the freehold estate of her said late hulband, called L. and did become, and now is, the proprietor faid

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proprietor thereof for her life, according to the faid testator's will; and this defendant admits it to be true, that all the faid relators have applied to her to pay the faid other defendants L. R. T. W and J. B. the faid fum of 500 l. in trust to be applied in and to the purposes mentioned and declared in and by the faid teffator's faid will in respect thereof, and also to affift them in carrying into execution the purposes aforefaid, according to the directions of the faid will in relation to the faid 500 %. But this defendant humbly fubmits it to the judgment of this honourable court, whether by virtue of the statute, made in the 9th year of the reign of his present Majesty, intitled, an Act to restrain the dispositions of lands, whereby the same became unalienable, the devise of the faid 500 l. fo to be laid out in fuch purchase and in such manner as in the said will mentioned, is not void; and this defendant therefore humbly fubmits it to the judgment of this honourable court, whether the faid 500 l. or any part thereof, ought, according to law, to be raifed or paid or applied for fuch purposes as aforesaid, or any of them; and this defendant humbly infifts upon the faid statute, and humbly hopes, that she shall have the benefit thereof in as full and ample manner, to all intents and purposes, is if he she had pleaded the same to so much of the aid information, as feeks to have the faid 500 l. raised and paid as aforesaid; and this defendant further faith, that she denies that the faid relators J. B. and J. C. the present church-wardens of the said paish of - or either of them, have or hath ever n any manner, fave by the faid information, applied to this defendant to pay to them the faid fum If 100 l. in trust to be by them applied in or to he charitable purposes mentioned or declared in or by the said testator's said will in respect thereof, or o any fuch effect; nor did this defendant ever reuse to pay the said relators, or either of them, the Vol. II. Aa faid faid fum of 100 l. to be by them respectively applied in and to the feveral charitable purpofes by the faid will declared concerning the fame, or to any fuch effect; but on the contrary, this defendant is and always has been ready and willing to pay the fame to the church-wardens of the faid parish, at any time whenever they would think proper to require or receive the fame: And this defendant has paid interest for the said 100 l. at the rate of 5 l. per cent. by the year to the church-wardens, vicar and curate of the faid parish, or to one of them, for the time being, from the time of the death of this defendant's faid husband to the - day of the year of our Lord ---: And this defendant admits it to be true, that, for the reasons herein before mentioned, she does refuse to pay, and does humbly infift, that she is no-wife liable or obliged to pay to the faid other defendants L. R. T. W. and 7. B. or to any of them, the faid fum of 500 l. or any part thereof, to be by them applied in or to the feveral purposes by the faid will declared concerning the same, or to affift in the carrying into execution the faid purposes or directions of the faid testator in relation thereto; and this defendant denies, that the does or ever did pretend, that the faid W. B. the faid testator, did not leave affets sufficient to pay and fatisfy all his just debts, legacies and funeral expences, or to any fuch effect; but on the contrary, this elefendant does admit affets of the faid tellator's perfonal estate and effects, come to and now in he hands, sufficient to answer and pay the said legacing of 500 l. and 100 l. and the interest thereof respec rively; and this defendant denies, that the hath in any manner wasted or mi applied the said testators perional estate and effects, or any part thereof; and this defendant fiith, that she hath not exhibited any inventory of the faid teftator's personal estate into the registry of the proper ecclefiaftical court, she having

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never been called upon or defired fo to do; and this defendant denies, that the faid charitable bequefts are in any danger of being lost, or the intention of the faid testator frustrated, fave only, that as to the said devise of the said 500 l. this defendant doth humbly infift, that the fame is a bad and void devise at law; and that therefore the faid 500 %. or any part thereof, ought not to be raifed, or paid or applied, according to the directions of the faid will; and this defendant denies all manner of unlawful combination and confederacy in the faid information charged without that, that any manner or thing in the faid information contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered unto, &c. [in the common form.

A bill of interpleader.

To the Right Honourable, &c.

TUMBLY complaining, sheweth unto your I Lord hip, your orator J. W. of — That H.T. late of the city of B. in the county of S. being possessed of a messuage or tenement with the appurtenances, fituate and being at S. within the manor and parish of H. in the county of W. called the B. Inn, and also of two closes of arable land called W. fituate, lying and being within the faid manor and parish of H. for the remainder of one or more long term or terms of years, determinable with the lives of him the faid H. T. J. T. his fon, and M. M. widow, his daughter, and the furvivors and furvivor of them, which faid meffuage or tenement, lands and premiffes, had been granted, and which he so held by and under two several leases thereof respectively made and executed to him by J. W. of A a 2

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Esq; then Lord of the said manor, at and under the yearly rents and covenants therein respectively contained, he the faid H. T. did sometime in the year — duly make and publish his last will and testament in writing, and thereby give and devise all the said premisses to the said J. T. his son, for fo long of the faid terms as he should live, and after his death he gave the same to M. the wife of the faid 7. T. for fo long of the faid terms as the should live, and after her death willed and devised, that the executors of the faid 7. T. should hold and enjoy the faid premisses for all the rest, residue and remainder of the faid two terms then to come and unexpired, and of his faid will made the faid 7. T. executor; and foon after the making his faid will, he the faid H. T. departed this life; whereupon the faid 7. T. entered upon the faid premisses, and held and enjoyed the fame under the faid will; and he the faid 7. T. did foon after his faid father's death, prove the faid will in some proper ecclesiastical court, as in and by the faid will, or the probate thereof under the faid feal of the court, relation being thereunto had, will appear. And your orator further sheweth unto your Lordship, that the said J. T. being possessed of the said premisses, as devisee under the faid will, as aforefaid, or as executor of the faid will, he and the said M. his wife, did sometime in or about the year of our Lord - make fome mortgage of the faid meffuage or tenement called the B. inn to J. K. E. late of - Esq; since deceased, for securing the repayment of the principal fum of 100 l. with interest for the same; and at or about the same time, or shortly afterwards, they the faid J. T. and M. his wife, did make some mort gage of the faid two closes called W. to J. C. of the faid city of B. barber, for fecuring the repayment of the principal fum of 90 l. with interest for the same, as in and by the faid mortgage deeds, had your oraand

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for the same to produce, relation being thereunto refeetively had, would appear. And your orator further sheweth unto your Lordship, that afterwards the faid principal and interest secured by the faid mortgage to the faid J. C. not being paid according to the proviso or condition for payment thereof in the faid mortgage to him made contained, and the estate in law of and in the said two closes, being become absolute at law in him the said J. C. and there being 96 l. 10 s. remaining due to him for principal and interest on the said mortgage, he the said 7. C. did, by some indenture by him duly executed, for the confiderations therein mentioned, affign the faid two closes, and all his estate, right, title and interest therein to R. K. of B. in the faid county of W. yeoman, subject to redemption on payment of the principal fum of 96 1. 10 s. with interest for the same, by the faid 7. T. at the time and in the manner in the faid deed of affignment mentioned, as in and by the faid deed of affignment, had your orator the fame to produce, relation being thereunto had, would more fully appear. And the faid J. T. at or about the fame time delivered him the faid R. K. the possession of the said two closes, and he hath ever fince been in the receipt of the rents thereof; and your orator further sheweth unto your Lordship, that the faid 7. K. E. some time since departed this life, having in his life-time duly made and published his last will and testament in writing, and thereof nominated and appointed C. E. spinster, his only child, executrix, who hath fince his death duly proved his faid will in some proper ecclesiastical court, as in and by the probate thereof under the feal of the faid court, relation being thereunto had, will appear; and your orator sheweth unto your Lordthip, that the estate in law of the said C. E. of and in the faid meffuage or tenement called the B. ion being absolute in her as executrix as aforesaid, and A a 3

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there being a large fum of money due upon the faid mor gage thereof for principal and interest, she the faid C. E. did, by some indenture or deed of assignment, for the confiderations therein mentioned. sometime in or about the month of October last, asfign the faid meffuage or tenement with the appurtenances, and all her estate, right, title or interest therein to the faid R. K. as in and by the faid last mentioned deed or indenture of affignment, had your orator the fame to produce, relation being thereunto had, would appear. And your orator further sheweth unto your Lordship, that the faid R. K. being possessed of and intitled to the said two closes of land, by virtue of and under the faid affignment thereof, did sometime in or about the month of September last demise the same to your orator by parol or word of mouth only, for the term of three years from Michaelmas now last past, at the yearly rent of ---- payable --- which is the full yearly value thereof; and the faid C. E. shortly before she assigned the said messuage or tenement to the faid R. K. as aforefaid, had in like manner demiled the fame to your orator by parol or word of mouth only for three years from Michaelmas now last past, at the yearly rent of ____ payable ___ which is the full value thereof. And your orator sheweth unto your Lordship, that the said 7. T. having got into the possession of all the premisses, the faid R. K. hath caused an action of trespass and ejectment to be brought in his Majesty's court of King's Bench for recovery of the possession thereof, and hath caused a declaration in ejectment to be delivered to and ferved upon your orator, but at the fame time told your orator, that he would not diflurb your orator in his possession as tenant thereof as aforefaid, and that he only intended to recover the same against the said J. T. and your orator paying given notice of and delivered over the faid declaration aid

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declaration to the faid 7. T. he alledged to your orator, that he had paid off and fatisfied the faid R. K. all monies due on the faid two mortgages, and told your orator he need not give himfelf any trouble about it, declaring that he the faid J. T. would defend the faid fuit, and the possession of the faid pre-And your orator sheweth unto your Lordship, that --- being a year's rent, became due from your orator for the faid premisses; and they the said R. K. and J. T. have both of them demanded the same of and from your orator, and do each of them infift to be paid the same; and your orator sheweth unto your Lordship, that your orator confiding in such the declarations of them the said R. K. and J. T. with respect to the said ejectment, did not make any defence thereto, but by collusion between them the faid R. K. and J. T. the faid J. T. having caused himself or your orator to be made tenant in the room of the cafual ejector, the faid cause was by the faid R. K. carried down in order to be tried at the last affizes held in and for S. in the said county of W. and the jury being fworn, and the faid J. T. or any on his or your orator's behalf, not appearing to confess lease, entry and ouster, the plaintiff in the faid ejectment was nonfuited, and the Postea being returned, judgment hath been thereupon given against the casual ejector, and the said R. K. threatens that he will cause a writ of possession to be sued out upon the faid judgment, and will turn your orator out of possession of the said premisses, and will cause an action to be brought against your orator for the mesne profits thereof; and they both threaten to distrain your orator's goods for the faid rent, and otherwise to proceed against your orator at law for the same, so that your orator is not able to determine or judge to which of them the faid rent of right belongs, or is payable, nor to which of them securely and with safety to pay the same; and Aa4 they

they both declare and threaten they will turn your orator out of possession of the said premisses, and not fuffer your orator to hold or enjoy the fame. which actings and doings of the faid R. K. and J. T. (who combine and confederate together, and with divers other persons at present unknown to your orator, whose names, when discovered, your orator prays may be inferted herein, and they made parties, with apt words to charge them how to injure and oppress your orator in and touching the premisses) are contrary to equity and good conscience, and tend to your orator's manifest wrong and oppression. In tender consideration whereof, and forasmuch as your orator is remediless in the premisses by the rules of common law, and can only be relieved in a court of equity before your Lordship, where matters of this nature are properly cognizable, and where your orator may compel the faid claimants to interplead and fettle and adjust their rights and demands between themselves, so that your orator may be enabled to pay the faid rent with fafety; and for that your orator's witnesses, who could prove the truth of the feveral matters aforefaid, are dead, or gone into parts beyond the feas remote, and to your orator unknown; To the end therefore, that the faid R. K. and J. T. and the rest of the confederates (when discovered,) may upon their respective corporal oaths full, true and perfect answer make (according to the best of their knowledge, remembrance, information and belief,) to all and fingular the matters aforefaid, as fully and effectually to all intents and purposes, as if the same were here repeated, and they particularly and distinctly interrogated; and more especially that they may set forth and discover, whether the faid H. T. was not in his life-time possessed of the said messuage or tenement, and two closes of land, for some and what term or terms of years determinable in manner as aforesaid,

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or how otherwise; and whether he did not in his life-time duly make and publish his last will and testament in writing, and thereby give and devise the premisses, or any, and what part thereof, to such persons and in such manner as aforesaid, or how otherwise; and whether the said J. T. and M. his wife, or either and which of them, did not become possessed of or intitled under the said will, or how otherwise, to the said premisses, or any and what part thereof; and whether the faid J. T. and M. his wife, or the faid J. T. alone, did not make some, and what mortgage of the faid meffuage or tenement called the B. inn, to the faid J. K. E. and whether the estate at law of the said J. K. E. or of the said C. E. therein did not become absolute; and whether he the said J. K. E. is not dead, and where he died; and whether he did not in his life-time make the faid C. E. his only child executrix thereof; and whether she as executrix as aforesaid, did not become possesfed of or intitled to the same; and whether she did not make such affignment thereof as aforesaid, or any other, and what affignment, and when, to the faid R. K. or how otherwise he the said R. K. became possessed of or intitled to the same; and whether as they know, have heard or do believe, the faid C. E. before the making the faid affignment, did not demise the said messuage or tenement to your orator by parol or word of mouth, or how otherwise for fuch term of three years from Michaelmas last, or for what other term, at fuch yearly rent as aforefaid, payable as aforefaid, or what other rent and how payable; and whether they the faid J. T. and M. his wife, or the said J. T. alone, did not make some, and what mortgage of the said two closes to the faid 7. C. and whether the estate of the said 7. C. therein did not become absolute at law; and whether the said J. C. did not afterwards, and when, make some and what affignment thereof to the said R. R. K. and whether he the faid R. K. did not, and when, demife the faid two closes to your orator by parol or by word of mouth, or how otherwise, for fuch term of three years from Michaelmas last, or for what other term, at such yearly rent as aforesaid. payable as aforefaid, or what other rent, and how payable; and whether the faid R. K. hath not cau. fed a declaration of ejectment to be delivered, and when, to your orator; and whether he did not make and give your orator fuch affurance concerning the fame as aforefaid, or what elfe he faid, intimated or fignified to your orator concerning the fame; and whether he the faid 7. T. did not cause himself to be made defendant in the faid action in the room of the casual ejector, and whether he did not undertake or promise to defend the same, and whether he any ways, and how, did defend the fame; and whether the plaintiff in the faid ejectment was not nonfuited at the faid last S. assizes on account of the faid J. T.'s not appearing to confess lease, entry and oufter, and how otherwise; and whether thereupon judgment hath not been had, or is not intended to be had against the casual ejector; and whether he the faid R. K. hath not threatned or declared, that he would cause a writ of possession to be fued out upon the faid judgment, or doth not intend fo to do; and whether they the faid R. K. and 7. T. have not threatned to turn your orator out of the possession of the said premisses, or any and what part thereof; and whether there is not now due for rent of the faid premisses the sum of —— or any other, and what fum; and whether they do not both demand the faid rent, or threaten to distrain or sue your orator for the same, or which of them so doth, and that they may fet forth to which of them the faid rent doth of right belong, or is payable, and may interplead and fettle and adjust their faid demands between themselves; your orator being willing

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ling to pay the faid rent to either of them, to whom the same shall appear of right to belong, being indemnified; and that your orator may be at liberty to bring the fame into this honourable court, which your orator doth hereby offer to do for the benefit of fuch of the faid two parties who shall appear to be intitled thereto; and that they the faid R. K. and J. T. and each of them, may be restrained by the injunction of this honourable court from proceeding at law against your orator for the said rent, and also from proceeding in the said ejectment, or any other ejectment for recovery of the faid premifles or any part thereof, during the remainder of the faid three years, for which the faid premisses were severally demised to your orator as aforesaid; and that your orator may be quieted in the poffeffion of all and fingular the faid premisses during fuch the remainder of the faid term of three years; and that your orator may have and receive fuch further and other relief in and touching all and fingular the matters and things aforefaid, as to your Lordship shall seem meet and agreeable to equity and good conscience; May it please your Lordship, &c.

Note; To this bill an affidavit must be annexed, that the plaintiff doth not in any respect collude with either of the desendants touching all or any of the matters in question in the cause, nor is any ways indemnified by either of the desendants; nor doth exhibit his bill at the request or with the knowledge of either of them, but merely of his own free will, and to avoid being doubly vexed touching the matters contained in his bill.

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A Special conclusion to a bill exhibited against the Attorney General and others.

your orator his Majesty's most gracious writ and writs of subpana to be directed to the said A. B. C. D. and E. F. thereby commanding them and every of them, at a certain day and under a certain pain therein to be limited, personally to be and appear before your Lordship in this honourable court, then and there sull and persect answer to make to all and singular the premisses; and that the Attorney General, being attended with a copy of this bill, may appear, and put in his answer theresto; and that all the said defendants may farther stand to and abide such order, direction and decree in the said premisses, as to your Lordship shall seem meet. And your orator shall ever pray, &c.

An answer to a bill of foreclosure.

The Answer of, &c.

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denture of mortgage, as by the complainant's bill is mentioned to bear date the —— day of and made between this defendant by the name of of — in the county of — of the one part, and the complainant, by the name of of --- &c. of the other part, this defendant in consideration of the sum of - paid by the said complainant to this defendant, did grant, bargain, fell, alien, release and confirm unto the said complainant and his heirs the faid feveral meffuages, lands, tenements and premisses in the said complainant's bill for that purpose more particularly mentioned and fet forth, and the reversion and reverfions, remainder and remainders, rents, issues and profits thereof, and all his estate therein, together with all deeds, evidences and writings touching or concerning the premisses, to hold unto the faid complainant, his heirs and affigns for ever; and this defendant does admit, that in fuch indenture of mortgage there is a provifo to the effect in the complainant's bill mentioned; and likewise that there is fuch a memorandum or indorfement on the back of the faid indenture of mortgage, to the effect in the complainant's bill also mentioned; and likewise, that for the further and better securing the payment of the faid fum of --- with interest to the complainant, this defendant did enter into fuch obligation to the complainant, as in the complainant's bill in that behalf is mentioned, and with fuch condition as in the complainant's bill is fet forth; but for greater certainty as to the faid indenture of mortgage, indorsement and bond, this defendant refers himself to the same respectively, when they shall be severally produced. And this defendant does admit, that the faid fum of -- or any part thereof, or any interest for the same, was not paid to the complainant, purfuant to the proviso in the faid indenture of mortgage contained, and that thereby the complainant's estate and interest in the mortgaged premisses may become absolute in law: and this defendant does admit, that the complainant either by himself, or others on his behalf, may have applied to him for the payment of the interest of the faid - and on the defendant's not paying of the fame, that this defendant should pay the whole principal and interest, but does not remember or believe that the complainant, or any person on his behalf, ever applied to him to release his equity of redemption in the faid mortgaged premiffes, which faid premisses this defendant faith that he had power to affign to the complainant, as is herein before mentioned, and not affigned over to any other person or persons, or incumbered or charged in any other manner than as is herein before mentioned: And this defendant does admit, that he has not paid to the complainant any interest for the faid - or any part of the faid principal fum of -but this defendant faith, that on the -- day of -- now last past, there was no more due to the complainant from this defendant, for the interest of the faid — than the fum of — which faid premisses, notwithstanding such arrears of interest, this defendant humbly apprehends to be an ample fecurity for the faid principal fum of -and interest, the faid premisses being of considerable value, and at the improved rent of - and upwards, and therefore humbly hopes that this court will allow him a reasonable time to redeem and pay off the faid mortgage, as he is willing and defirous fo to do; and this defendant denies all and all manner of unlawful combination and confederacy in the complainant's bill charged against him; without that, that there is any other matter or thing in the complainant's faid bill of complaint contained, material or effectual for this defendant to make answer unto, and not herein and hereby fufficiently answered unto,

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unto, confessed or avoided, traversed or denied, is true to the knowledge and belief of this defendant. All which matters and things this defendant is ready to aver, maintain and prove, as this honourable court shall award, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf wrongfully sustained.

An answer of infants by their guardian.

Sworn the — day of — 1744. by the faid D. B. as guardian of the faid defendants the infants, purfuant to an order bearing date the — day of — 1744. before me —

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The joint and several answer of A. B. and C. D. infants, inder the age of 21 years, by D. B. their mother and guardian, two of the defendants, to the bill of complaint of E. F. widow, complainant.

HE said defendants, saving to themselves, and each of them, all and all manner of advantage of exception to the many untruths, errors, uncertainties, and other imperfections in the faid bill of complaint contained, for answer thereunto, or to to much thereof as these defendants are advised is material for them, or either of them, to make anfwer to, they answering by their said guardian, severally fay, That they are strangers to all and fingular the matters and things in the faid bill of complaint contained, otherwise than that these defendants have heard, that G. B. their grandfather, in the bill named, was feiled of or intitled to feveral lands and tenements, and also possessed of a considerable personal estate; and also have heard that these defendants father H. B. in the bill mentioned died intestate; and also that their said grandfather and father made some provision for these defendants

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by bond, settlement, or otherwise: And these defendants being infants of tender years submit themselves to the judgment of this honourable court, and humbly hope that what right or title they, or either of them, have to the real or personal estates of their grandsather, or father, shall be protected and saved to them respectively: Without that, that, &c.

An answer and disclaimer.

The several answer and disclaimer of A. B. one of the defendants to the bill of complaint of complainants.

HIS defendant, faving and referving to himfelf, now and at all times hereafter, all manner of advantage and benefit of exception, that may be had and taken to the many untruths, incertainties, infufficiencies and imperfections, in the faid complainants faid bill of complaint contain'd, for a full and perfect answer thereunto, or to such part thereof as it materially concerns this defendant to make answer unto, he answereth and faith, That he believes that C. D. did die seised of such estates in — and — as in the faid complainants faid bill are mentioned; and this defendant does believe that the faid C. D. did make such last will and testament in writing, and did thereby create fuch trufts out of the faid - estates, and appointed this defendant trustee thereof, in such manner and to such purport and effect, as in the said complainants faid bill for that purpose set forth; and this defendant does believe that the faid teffator made E. F. Gent. executor of his faid will; and this defendant does believe that the faid C. D. foon after making his faid will departed this life, that is to fay, on or about the — day of — in the year

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- without revoking or altering his faid will, feifed of fuch eflates in — and — as in the faid complainants faid bill are fet forth: And this defendant further faith, that he was advised that the faid trust would be attended with some difficulty, befides expence and loss of time to this defendant; therefore this defendant absolutely refused to intermeddle therewith, or any way concern himself therein: And this defendant denies, that he or any for him ever entered on the faid trust-estate, or ever received any of the rents and profits thereof; but this defendant hath been informed and believes the same were received by G. H. of the city of — in the faid county of ---- Gent. who was imployed by the faid testator C. D. in his life-time to receive the rents and profits of the faid - estate for the faid C. D. and this defendant doth believe. that the faid G. H. hath received the faid rents and profits of the faid trust-estate ever since the death of the faid testator C. D. and still doth continue to receive the same: And this defendant positively denies that the faid G. H. had any power, authority or direction from this defendant to receive all or any part of the rents and profits of the faid trustestate, or that he ever accounted with this defendant for the same: And this defendant is very defirous and ready to be discharged from his said trust, and to do any act for that purpose as this honourable court shall direct, this defendant being indemnified in fo doing, and having his costs. And this defendant farther faith, that as to fo much of the faid bill as feeks a discovery of this defendant's title to the lands in —— this defendant faith, that he doth not know that he this defendant to his knowledge or belief ever had, nor did he claim or pretend to have, nor doth he now claim or pretend to have, any right, title or interest of, in or to the Vol. II.

faid eftate in - in the faid complainants bill fet forth, or any part thereof; And this defendant doth disclaim all right, title and interest to the estate in — in the complainants faid bill mentioned, and every part thereof. And this defendant doth deny all manner of unlawful combination and confederacy unjustly charged against him in and by the faid complainants faid bill of complaint; without that, that any other matter or thing in the faid complainants faid bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and fufficiently answered unto, confessed or avoided, traversed or denied, is true: All which matters and things this defendant is ready to aver, maintain and prove, as this honourable court shall award, and humbly prays to be hence difmiffed with his reasonable cofts and charges in this behalf most wrongfully fustained.

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CHAP. IX.

Pleas, answers and demurrers.

Plea of a former suit depending for the same matter.

Filed the — day of — 1744.

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The plea of C. D. Gent. one of the defendants, to the bill of complaint of A. B. Esq; complainant.

HE faid defendant by protestation, not con- Note; this felling or acknowledging all or any of the plea is withmatters and things in the complainant's faid bill of complaint contained to be true, in such manner and form as the same are therein declared and fet forth, for plea thereunto faith, that heretofore, and before the faid complainant exhibited his bill in this honourable court, to wit, on the ----- day of - which was in the year of our Lord the faid now complainant, together with -- and - in the faid bill named, did exhibit their bill of complaint into this honourable court against this defendant, and also against -- for the same matters, and to the same effect, and for the like relief and purpose as against this defendant, as the now complainant doth by his present bill set forth; to which said first bill this defendant did put in his anfwer, and the then complainant thereunto replied, and the faid former bill is still depending in this honourable court, and the faid cause is yet und termined; and therefore this defendant doth plead the faid B b 2

faid former bill, answer and proceedings in bar to the faid now complainant's faid present bill; and humbly prays the judgment of this court, whether he shall be compelled to make any farther or other answer thereunto; and prays to be hence dismissed with his costs and charges in this behalf sustained.

A plea of the flat. of limitations in bar of an account.

Sworn the — day of — 1744, before The plea of C. D. Gent, defendant, to the bill of complaint of A. B. Gent. complainant. cor

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THIS defendant by protestation, not confelfing or acknowledging all or any of the marters and things in the complainant's faid bill of complaint contained to be true, in fuch manner and form as the lame are therein and thereby charged and alledged, for plea unto the faid bill faith, That if the complainant, either in his own right, or as executor of -- in the bill named, ever had any eaule of fuit against him this defendant, for or concerning any the matters, transactions or dealings ia the faid bill of complaint mentioned (which this defendant doth in no fort admit) the fame did accrue or arife above fix years before filing the faid bill, and above fix years before ferving this defendant with any other process to appear to and answer the same: And this defendant farther for plea faith, and doth aver, that he did not at any time within fix years before filing the complainant's faid bill of complaint, nor within fix years before this defendant was ferved with process to appear and answer thereto, ever promise or agree to come to any account for, or to pay or any ways fatisfy the faid complainant

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any money, for or concerning any the matters, transactions or dealings in the complainant's said bill of complaint charged or alledged; and therefore this defendant doth plead the act of parliament or statute of limitations, made in the 21st year of King James the first, and prays the benefit of the said act of parliament for limitation of actions: All which matters this defendant doth aver and plead in bar of the complainant's said bill, and of the complainant's pretended demands, for which he seeks to be relieved by his said bill; And this defendant prays to be hence dismissed with his reasonable costs in this behalf wrongfully sustained.

A plea in bar of a verbal agreement, where a bill is brought to carry it into execution, and to reduce it into swriting.

Sworn the — day of — 1744 before

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The plea of C. D. one of the defendants to part, and his answer to the residue of the bill of complaint of A. B. and others, complainants.

THE end of the plaintiff's bill is to compel this defendant to perform an agreement thereby fuggelled to have been made by this defendant with the complainant, for the granting or executing to the complainant a leafe in writing of the feveral lands and tenements in the bill mentioned, for the term of ten years, from the feast of St. Michael the archangel, which was in the year of our Lord God —— pursuant to such precedent agreement; this defendant by protestation, not confessing or acknowledging all or any the matters or things in the said bill contained to be true,

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in fuch fort, manner and form, as the fame are therein and thereby charged, alledged or fet forth. as to fo much of the faid bill as feeks to compel this defendant, or any person or persons claiming under him, to execute a leafe in writing of the feveral lands and tenements in the bill mentioned, or of any of them, or of any part thereof, pursuant to the pretend d agreement in the bill mentioned, and as to any the relif thereby prayed touching such leafe and agreement, this defendant doth plead in bar; and for plea faith, that by an act of parliament made in the 9th year of the reign of his late Majesty King Charles the Second, intitled, An ast for prevention of frauds and perjuries, it is amongst other things enacted, That from and after the 24th day of June 1677, no action shall be brought whereby to charge any person upon any contract of lands, tenements or hereditaments, or any interest in or concerning them, unless the agreement upon which fuch action shall be brought, or some memorandum or note thereof, shall be in writing, and figned by the party to be charged therewith, or some other person thereunto by him lawfully authorised, as by the said act may appear: And this defendant avers, that neither he this defendant, nor any person by him lawfully authorited, did ever make or fign any contract or agreement in writing for making or executing any leafe to the complainant of the same premisses, or any of them, or of any part or parcel thereof, or to any such effect, as by the faid bill is fuggefted, or any memorandum or note in writing of any agreement whatfoever, for or concerning the demissing or leasing, or making or executing any lease of the said premisses, or any of them, or any part or parcel thereof to the complainant: and therefore this defendant doth plead the said act of parliament, and matters aforefaid, in bar to so much and such part of the faid bill

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bill as feeks to compel this defendant, or any perfon or persons claiming under him, to execute a leafe to the complainant of the feveral lands and tenements in the bill mentioned, or of any of them, or of any part or parcel thereof, pursuant to the faid pretended agreement, and as to any the relief thereby prayed touching such lease and agreement, and humbly prays the judgment of this honourable court, whether he shall be compelled to make farther or other answer to so much and fuch part of the faid bill as is herein and hereby pleaded unto as aforefaid: And this defendant not waiving his faid plea, but wholly relying and infifting thereon, for answer to the residue of the complainant's bill not herein before pleaded unto, or to so much thereof as he this defendant is advised is material or necessary for him to make answer unto, he answereth and saith, &c. [Here recite such answer as counsel shall advise the defendant to make to the residue of the complainant's said bill, and conclude thus Without that, that any other matter or thing in the complainant's faid bill of complaint contained, material or effectual for this defendant to make answer unto, and not herein before pleaded and answered unto, confessed or avoided, traversed or denied, is true: All which matters and things this defendant is ready to aver, justify, maintain and prove, as this honourable court shall award and direct; and humbly prays to be hence dismiffed, with his reasonable costs and charges in this behalf fustained.

A plea of the statute of 29 Car. 2. in bar to a pretended agreement, and also a misnomer.

Sworn, &c:

The several plea and answer of C. D. one of the defendants to the bill of complaint of A. B. complainant.

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THE said defendant by protestation, not confesting or acknowledging all or any of the matters of things in and by the faid bill of complaint fet forth and alledged to be true, for plea thereunto faith, that he is advised that the complainant, by his bill of complaint, feeks to have a discovery of a supposed undertaking and promise, suggested to be made by this defendant fometime in or about the month of - which was in the year of our Lord - wherein this defendant is supposed to undertake and promise the complainant to satisfy and pay him for whatever goods and wares the complainant should from thenceforth sell to -another defendant in the faid bill named; and that under fuch pretended agreement the complainant hath fold and delivered unto the faid - the feveral parcels of goods mentioned in a schedule annexed to the faid bill, amounting to the fum of ---- as to fo much and fuch part of the faid bill which feeks a discovery from this defendant relating to fuch pretended undertaking or promife, or any relief thereupon, this defendant pleadeth, that by a statute or act of parliament made in the 29th year of the reign of King Charles the Second, intitled, An act for prevention of frauds and perjuries, it is amongst other things enacted, That from and after the 24th day of June which was in the year of our Lord 1677, no contract for sale of any goods of

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goods, wares and merchandizes for the price of 181. sterling, or upwards, shall be allowed to be good, except the buyer shall accept part of the goods fo fold, and actually receive the fame, or give fomething in earnest to bind the bargain, or in part of payment; or that some note or memorandum in writing of the faid bargain be made and figned by the parties to be charged by fuch contract, or their agents thereunto lawfully authorised; which statute, and particularly the said clause therein and herein before mentioned, this defendant doth plead in bar to the complainant's demands, the complainant not suggesting in and by his faid bill of complaint, that this defendant did accept any part of the goods suggested in and by the said bill of complaint to be fold, or actually received the same, or gave any thing in earnest to bind the bargain, or in part of payment; nor that any note or memorandum in writing of fuch pretended bargain was made and figned by this defendant, or by any agent lawfully authorifed by this defendant, otherwife than as it is pretended and fuggested in and by the faid bill of complaint, that this defendant did at the time of fuch pretended undertaking and promife, write down his this defendant's name on a piece of paper, and deliver the same to the complainant: And this defendant for farther plea faith, that the complainant in and by his faid bill of complaint doth call this defendant by the name of — whereas this defendant doth aver, that his name is and that he this defendant was always known by the name of — and that this defendant always figned his name - to the best of this defendant's knowledge, remembrance and belief; therefore this defendant doth likewise plead the faid misnomer in bar of any farther discovery and relief prayed by the faid bill, and humbly claims the benefit thereof. And for answer to the refidue

refidue of the faid bill of complaint, or to so much and fuch part thereof as this defendant is advised materially concerns him to make answer unto, this defendant answereth and faith, That he believes it may be true that the faid - was by trade a - and that the complainant might have dealings with him the faid --- in the way of his trade, and that the faid — might be a prisoner for debt in the King's Bench prison about the time for that purpose set forth in the bill; and this defendant farther answering saith, that he doth not remember that about the time in the bill fet forth, or at any other time, this defendant did write down his name on a piece of paper, and deliver the same to the complainant; and this defendant is the rather induced to believe that he did not fo write down his name on a piece of paper, and deliver the same the complainant, because the complainant throughout the faid bill of complaint hath called this defendant by the name of — whereas this defendant never wrote any other name for himself than - to the best of this defendant's knowledge, remembrance and belief; and therefore if this defendant had wrote his name on a piece of paper, and delivered the same to the complainant, this defendant verily believes that the name pretended to be wrote on fuch piece of paper would have been — and not — however, if the complainant has any fuch piece of paper, this defendant leaves the complainant to make such use thereof as he shall be advised: For all which causes this defendant doth humbly demand the judgment of this honourable court, whether he shall be compell d to make any farther answer unto the complainant's faid bill of complaint than as aforefaid. And this defendant doth deny all unlawful combination and confederacy; without that, that any other matter or thing in the complainant's faid bill of complaint contained,

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contained, material or effectual for this defendant to make answer unto, and not herein before pleaded and answered unto, confessed or avoided, traversed or denied, is true: All which matters and things this defendant is ready to aver justify, maintain and prove, as this honourable court shall order and direct. And this defendant humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

Sworn, &c.

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A plea of the statute of limitations in bar of an account.

THIS defendant by protestation, not confessing or acknowledging all or any the matters and things in the complainant's faid bill of complaint contained to be true, in fuch manner and form as the same are therein alledged and set forth, as to so much of the said bill as seeks an account and discovery of the estate or effects of A. B. Gent. deceased, this defendant's testator, or that seeks satisfaction for or on account of any money received by the faid A. B. on account of ——— in the bill named, or for or on account of the complainant; or that feeks a discovery how many hogsheads of tobacco or rice, or any other commodities pretended to be configned to the faid A. B. or that feeks a fatisfaction for the fame, or that feeks a discovery or fatisfaction for any of the monies, goods or etfects of the faid --- come to the hands of this defendant since the decease of the said A. B. this defendant pleads thereto, and for plea faith, that in the bill named; under whom the complainant pretends to claim, departed this life in or about the year — and that A. B. Gent. this defendant's 3

fendant's teffator, departed this life in or about the month of -- and that the monies and effects pretended to be received by the faid A. B. or by this defendant, and the goods and commodities pretended to be configned, if any fums of money, goods or effects were received by the faid A. B. or by this defendant (which this defendant doth not in any fort admit) that all and every fuch fums of money, goods and effects, were received by the faid B. or by this defendant above fix years before this defendant was ferved with any process of this court to answer the said bill, or any process was sued out against this defendant to call this defendant to an account for the same; and that if the complainant had any cause of action or suit against this defendant, or against the said A. B. for or concerning any of the faid matters, (which this defendant doth not admit) that such cause of action or suit did accrue or arise above fix years before filing of the faid bill, or ferving this defendant with process to appear to and answer the said bill: Nor did this defendant or his faid testator, at any time within six years before exhibiting the faid bill or fuing out process against this defendant, promife or agree to come to any account, or to make fatisfaction, or to pay any fum or fums of money for or by reason of any of the faid matters; and therefore this defendant doth plead the act of parliament made in the twenty-first year of the reign of King James the first, for the limitation of actions, and avoiding of fuits at law; and prays the benefit of the faid act, and pleads the same in bar of fo much of the complainant's faid demands in his faid bill fer forth and mentioned; and prays the judgment of this honourable court thereon. And this defendant not waving his faid plea, but wholly relying and infifting thereon, for answer to the residue of the complainant's said bill, or to so much thereof

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thereof as he this defendant is advised is material or necessary for him to make answer unto, he this defendant answereth and saith, &c.

A plea of outlawry.

Sworn, &c.

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ch of The plea of A. B. defendant, to the bill of complaint of C. D. complainant.

THE faid defendant by protestation, not con-I fessing or acknowledging all or any of the matters or things in the complainant's faid bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth, alledged and declared, for plea thereunto faith, That the faid complainant now is and standeth a person outlawed, and is thereby disabled by the laws of this realm to fue or commence any action or actions, fuit or fuits in this honourable court, or in any other court, until the faid outlawry be reversed by due course of law; for this defendant saith, that on Monday next before the feast of the purification of the bleffed Virgin Mary in the tenth year of the reign of our late Sovereign Lord King ---- the faid complainant by the name of C. D. was outlawed in an action of trespass at the suit of as by the said outlawry sub pede sigilli hereunto annexed may appear; which faid outlawry doth yet stand and remain in full force and unreversed: And this defendant doth aver that the faid C. D. the complainant named in the faid bill of complaint, and the faid C. D. named in the faid writ of capias utlegatum hereunto annexed, is one and the same person, and not diverse and several: And therefore this defendant doth humbly demand the judgment of this honourable court, whether or no he shall be compelled to make any other or farther answer to the complainant's said bill of complaint, until the said complainant shall have reversed the said outlawry, and thereby become a person of ability and capable to exhibit a bill of complaint against this defendant; and in the mean time this defendant prays to be dismissed with his reasonable costs, in this behalf wrongfully sustained.

Plea to a bill exhibited by a feme covert in her own name.

Sworn, &c.

The plea of E. F. defendant, to the bill of complaint of L. M. complainant.

THE faid defendant, not confessing all or any the matters and things in the complainant's faid bill of complaint contained to be true, in fuch manner and form as they are therein and thereby fet forth, for plea thereunto this defendant faith, That the plaintiff at and before the exhibiting her faid bill of complaint was married to one --- who is yet living, which this defendant doth aver and will prove, if there be occafion; and therefore this defendant doth plead the fame in abatement to the complainant's faid bill of complaint, and humbly craves the judgment of this honourable court, whether he shall make any answer thereunto; And humbly prays to be hence difinished with his costs and charges, in this behalf fustained.

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A demurrer for want of equity.

The demurrer of C. D. one of the defendants, to the bill of complaint of A. B. complainant.

HIS defendant by protestation, not confesfing or acknowledging all or any of the matters or things in and by the faid bill fet forth and complained of to be true, in manner and form as the same are therein and thereby set forth and alledged, faith she is advised by her counsel, that there is no matter or thing in the faid bill contained good and fufficient in law to call this defendant in question in this honourable court for the same, but that there is good cause of demurrer thereunto, and therefore this defendant doth demur thereunto, and for cause of demurrer this defendant saith, That the complainant's faid bill (in case the allegations therein contained were true, which this defendant doth in no fort admit) contains not any matter of equity whereon this court can ground any decree, or give the complainant any relief or affiftance, as against her this defendant; wherefore, and for diverse other errors and imperfections in the faid bill appearing, this defendant doth demur in law thereunto; and humbly demands the judgment of this honourable court, whether she shall be compelled to put in any farther or other answer to the said bill; and humbly prays to be hence dismissed with her reasonable costs, in this behalf most wrongfully fustained.

A demurrer for want of parties.

The demurrer of C. D. defendant, to the bill of complaint of A. B. complainant.

S to fo much of the complainant's bill where. by the complainant doth intitle himself to, and demands from this defendant as executrix of E. F. in the bill named, the fum of terest, under a letter of appointment, pretended to be directed to G. H. in the bill named by J. K. also in the faid bill named, and another defendant thereto; whereby the faid other defendant K. did direct the faid H. to pay ——— in the manner in the bill mentioned, and for that the faid H. as is pretended, had notice of an affignment in the bill mentioned of the faid - to the complainant, and promifed to pay the fame: This defendant by protestation, not confessing or acknowledging the complainant's bill to be true, in such fort, manner or form, as the same matters are therein set forth, this defendant doth demur thereto, and for cause of demurrer sheweth, That by the complainant's own shewing in his bill, the faid G. H. is dead, and neither his executor or administrator is made a party to the said bill; and therefore, and for other good cause or causes of demurrer in the bill contained, as to lo much of the complainant's faid bill as is demurred unto as aforefaid, this defendant doth demand the judgment of this honourable court, whether this defendant shall be compelled to make any answer thereunto, otherwise than as aforesaid. And this defendant humbly prays to be hence dismissed with her cofts, in this behalf wrongfully fustained.

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The joint and several demurrer of C. D. and E. F. two of the defendants to the bill of complaint of A. B. widow, complainant.

THE faid defendants by protestation, not confeffing or acknowledging all or any of the matters or things in the complainant's faid bill of complaint to be true, in fuch fort, manner and form, as the same are therein and thereby set forth and alledged, for answer to the said complainant's bill of complaint, these defendants do demur in law, and for cause of demurrer say, That it appears of the plaintiff's own shewing in her faid bill of complaint, that she claims or pretends title to one third of the premisses in question in the bill mentioned, as a person next in remainder in tail, under a devise in a will in the faid bill mentioned and fet forth; which is a matter merely triable at law; and touching which the complainant may fufficiently ascertain her title by ejectment or ejectments to be brought at law; wherefore, and forafmuch as the complainant's faid bill of complaint doth not contain (as these defendants are advised) any matter of equity sufficient to establish any right or demand against these defendants or either of them, nor to draw them in fuit into this honourable court touching the matters complained of in the complainant's faid bill of complaint, and also for many other errors and imperfections in the complainant's faid bill of complaint contained, these defendants do demur in law thereunto, and humbly crave the judgment of this honourable court, whether they ought to make answer to the faid bill of complaint; and humbly pray to Vel. II.

be hence difmiffed with their costs, in this behalf wrongfully sustained.

A demurrer where the defendants are charged with felony or compounding felony.

The demurrer of the defendants C. D. G. H. and E. bis wife to part, and their answer to other part of the bill of complaint of A. B. complainant.

S to fo much of the complainant's bill as feeks to charge these defendants or any of them with the concealing or compounding the felony in the bill mentioned, or as feeketh to compel any of these defendants to make any discovery touching the same, or any of the matters relating thereto, in the bill fuggested or alledged, these defendants by protestation, not confessing or acknowledging any of the matters or things relating thereto in the faid bill comprized to be true, in fuch fort, manner and form, as therein the fame are alledged or fet forth, these defendants do demur, and for cause of demurrer shew, That they ought not to be compelled to discover or set forth any marters whereby they may impeach or accuse themselves of an offence or crime for which they may fuffer corporal punishment, or be grievously fined; and therefore, and for diverse other good causes of demurrer, in the complainant's faid bill of his own shewing appearing, these defendants, as to fo much of the complainant's faid bill as before is fet forth, do demur, and do demand the judgment of this honourable court, whether they, or any of them, ought, or shall be compelled, to make any answer thereto, other, or otherwife than as aforefaid; and humbly pray to be hence dismissed with their costs. And these defendants by way of answer do deny, &c.

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A demurrer for want of parties, and for want of an affidavit, to a bill brought for a discovery of a deed.

The demurrer of A.B. and J. his wife, defendants, to the bill of complaint of C.D. complainant.

HE faid defendants by proteflation, not con-feffing or acknowledging all or any the feffing or acknowledging all or any the matters and things in the complainant's bill of complaint alledged and fet forth to be true, in fuch manner and form, as the fame is and are thereby fet forth, fay, That they are advised that the substance of the faid bill is to discover a deed suggested to be made by - in the faid bill named, whereby per annum, or fome such provision was made for the benefit and advantage of his younger fons, and payable out of his lands, and that the plaintiff is the survivor and intitled to the said provision, and that the faid lands, upon the death of the faid descended or came to his eldest son and heir deceased, of whom the plaintiff, as is suggested, demanded the benefit of the said deed; but before any benefit obtained, he the faid —— died, leaving two daughters his heirs, and that the plaintiff after the death of the faid — made his application to this defendant — the relict of the faid and fent the deed to her, and that the faid deed is now in the hands of the faid defendants, who by combination with the faid daughters, and heirs do refuse to pay the plaintiff the said provision made by his father and the arrears thereof, or permit him to enjoy the lands out of which the fame is iffuing, and therefore prays a discovery of the said deed, and to have the arrears of the faid provision and farther relief: To which bill these defendants, as advised, Cc 2

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do demur, and for cause of demurrer say, That the plaintiff ought according to the rules of this court to have made affidavit that he had not in his custody or power the deed of which he feeks a discovery, and for want whereof he prays relief in this court; and also for that the said complainant seeks relief for arrears of a provision of - per annum, or some other provision made by the supposed deed, and to have relief in this court, to make good the same for the future, and yet hath not made the executors or administrators, nor the heirs of the faid —— parties to his bill, who are (as these defendants are advised) the proper persons intitled and interested to contest the faid arrears or future payment thereof, and the relief prayed in and by the complainant's faid bill: And although he hath taken notice in his bill of the faid daughters and heirs, yet hath he not made them defendants, nor prayed any process against them: Wherefore, and for many other errors and defects in the faid bill, the faid defendants do demur in law, and do humbly pray the judgment of this honourable court, whether they shall be compelled to make any other or farther answer thereto; and do also humbly pray to be hence dismissed, &c.

A demurrer for that the plaintiffs have not intitled themselves to prosecute.

THE faid defendants by protestation, not confessing or acknowledging all or any of the matters or things in the complainants bill of complaint contained to be true, in such manner, fort and form, as the same are therein and thereby set forth and alledged, do demur thereunto, and for cause of demurrer shew, That the scope and end of the complainants bill is to be relieved touching several sums of money by the said bill supposed to be due from these defendants to one—— deceased,

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in the faid bill named, which the complainants would, or feek by their faid bill to claim as executors to the faid - and yet have not alledged in or by their faid bill, that they have proved the will of the faid ——— (if any fuch was made) or otherwife taken upon them the burden or execution thereof, or any ways intitled themselves unto her personal estate, and to sue for the same: Wherefore, and forafmuch as the faid complainants have not well and fufficiently intitled themselves in and by their faid bill to the faid money (if any had been due from these defendants or either of them to the said -) as is thereby supposed, and for that, should these defendants pay the money demanded by the faid bill to the complainants before they have either proved the will or fued out administration, they cannot fufficiently, as these defendants are advised and insist, discharge these defendants, nor give these defendants any proper receipt or receipts for the same, but that they shall or may be liable to be questioned again by such person as may sue out administration to the said — with the said will annexed, or otherwise, for which and divers other causes these defendants do demur in law unto the complainants faid bill of complaint, and all the matters and things therein contained; and humbly demand the judgment of this honourable court, whether they, or either of them, shall be compelled to make any other or farther answer thereunto; and pray to be hence difmissed with their costs, &c.

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Demurrer to a bill seeking to have a will established, and to perpetuate the testimony of witnesses, and praying relief.

The demurrer of A. B. and C. D. defendants, to part, and their answer to other part of the bill of complaint of E. F. complainant.

HE faid defendants by protestation, not confesting or acknowledging all or any of the matters and things in the complainant's bill mentioned to be true, in such manner and form, as the same are therein set forth, as to so much of the said bill as feeks to have the will of —— deceased, in the faid bill named, established against these defendants by the decree of this honourable court, these defendants do demur, and for cause of demurrer do shew, That it appears by the faid complainant's own shewing in and by the faid bill, that the faid complainant hath not any equity or title whereon fuch decree can be grounded or made against these defendants, or either of them, and the validity of the faid will is a matter properly triable at law; wherefore, and for divers other errors and imperfections appearing in the faid bill, these defendants do demur to fo much and fuch part of the faid bill as aforesaid, and humbly pray the judgment of this honourable court, whether they shall be compelled to make any answer to such part of the faid bill as is so demurred unto. And as to the residue of the faid bill, these defendants respectively saving and referving to themselves all benefit and advantage of exception to the imperfections and infufficiencies thereof, do severally answer and say, &c. ---They deny that the tellator made a will, and believe he was imposed upon in making the same, and infift fist that they the defendants, as heirs at law to the faid testator, are intitled to his freehold and copyhold estates, in the complainant's bill mentioned, &c.

A demurrer put in by three defendants to a bill exhibited against them and others, for several and distinct matters that have no relation to each other, and wherein they are not interested.

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The demurrer of M. N. R. S. and W. N. three of the defendants, to the bill of complaint of A. B. complainant.

THESE defendants by protestation, not con-I fessing or acknowledging all or any of the matters or things in the faid complainant's bill fet forth to be true, in such fort, manner and form as the same are therein and thereby set forth and alledged, for demurrer thereunto these defendants severally fay, That it appears by the faid bill, that the fame is exhibited against these defendants and and —— for feveral and distinct matters and causes that have no relation to or dependance upon each other, and wherein, as it appears by the bill neither of these defendants are in any manner interested or concern'd, by reason of which matters the complainant's bill is fpun out to a great length, and these defendants forced to take a copy of the whole, and by the mingling defendants and causes together in one bill, in the progress of the suit, the pleadings, orders and proceedings will be intricate and prolix, and these defendants put to unreasonable and unneceffary charges in taking copies thereof; for which reasons, and for divers other errors and imperfections in the faid bill appearing, these defendants do demur mur to the faid bill of complaint, and humbly demand the judgment of this honourable court, whether they shall be compelled to make any farther or other answer thereunto; and humbly pray to be hence dismissed with their costs.

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A demurrer, plea and answer to a bill seeking relief against a will, whereby a personal estate is devised, being proved in the ecclesiastical court, and the will pleaded in bar, and for want of equity.

The joint and several demurrer of S. N. and E. bis wife, to part, and the plea of the said S. N. to part; and the joint and several answer of the said S. N. and E. bis wife to other part of the bill of complaint of M. B. W. T. and J. M. and S. bis wife complainants.

HESE defendants S. N. and E. his wife, by protestation, not confessing or acknowledging all or any the matters and things in the faid of complaint to be true, in such fort and manner as the fame are therein expressed and contained, as to so much of the faid bill as feeks to fet afide or impeach, or have any relief against the will of R. R. in the bill named, as to the personal estate of the said R. R. or that feeks any discovery from these defendants, or either of them, in relation to the faid will, or that prays an injunction against this defendant S. N. to stop his proceedings at law against the said W. T. these defendants do demur thereunto, and for cause of demurrer shew, That it appears by the complainants own shewing, that this defendant &. N. hath proved the faid will of the faid R. R. in the prerogative court of the Archbishop of Canterbury; and these defendants are advised that the probate of wills

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wills relating to estates, and particularly relating to personal estates, do properly belong to the ecclesiaflical courts of this realm, and that the same ought not to be called into question in this honourable court: And for further cause of demurrer these defendants shew, that there is not, as they are advised, any matter or thing fet forth in and by the faid bill as a foundation of equity for this court to interpole, in relation to the action at law commenced by this defendant S. N. against the said W. T. but what is properly cognisable at law, and that the said complainant may have the benefit of, upon a trial at law, if the same is true; for which reason, and for divers other causes, these defendants do demur to so much of the faid bill as aforefaid, and humbly pray the judgment of this honourable court, whether they shall make any further or other answer thereto. And as to fo much of the faid bill as feeks to have a diffribution of the personal estate or effects of the said R. R. according to the statute of distribution of intestates estates, or that seeks to have any account or discovery of or from this defendant S. N. of the personal estate of the said R. R. this defendant S. N. doth plead thereunto, and for plea this defendant faith, That the faid R. R. did in his life-time, on or about — day of — in the year of our Lord - as this defendant believes, duly make and publish his last will and testament in writing, and thereby, after having given feveral legacies therein particularly mentioned, gave and bequeathed all the rest and residue of his real and personal estate unto this defendant, to hold to him, his heirs and alfigns for ever, and of the faid will made this defendant sole executor; And this defendant also, after the death of the faid testator, proved the said will in the prerogative court of the Archbishop of Canterbury, as by the probate thereof, under the feal of the faid court, now in the custody or power of

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of this defendant, ready to be produced, as this honourable court shall direct, and to which this defendant craves leave to refer, doth more fully and at large appear. All which faid matters and things this defendant doth aver, and is ready to prove, as this honourable court shall direct, and doth plead the same in bar to so much of the said bill as for that pu pose is herein before mentioned, and humbly craves the judgment of this honourable court, whether he shall make any further or other answer there-And as to so much of the said bill as these defendants have not before respectively demurred or pleaded unto, these defendants in no fort waving the benefit of their said demurrer and plea, or either of them, but wholly relying and infifting thereon, these defendants for answer to the residue of the complainants faid bill, or to fo much thereof as these defendants are advised is material or necessary for them, or either of them, to make answer unto, these defendants each speaking for him and herself, and not the one for the other, they these defendants do severally answer and say as follows, &c.

CHAP. X.

The form of special commissions and Writs.

A commission to assign a guardian for an infant, the guardian formerly assigned being dead.

GEORGE, &c. To, &c. Greeting. Whereas A. B. complainant, hath lately exhibited his bill of complaint before us in our court of Chancery

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cery against C. D. defendant : And whereas we have by our writ commanded the faid defendant to appear before us in our faid Chancery at a certain day now past to answer the said bill; but forasmuch as the faid defendant, being an infant under the age of one and twenty years, could not answer the faid bill, nor defend this fuit without having a guardian affigned in that behalf, a commission issued out of our faid court for affigning him a guardian for that purpose, and he accordingly put in his answer by E. F. his guardian (who is fince dead); Know ye therefore, that in pursuance of an order of our faid court dated the — day of — we have given unto you, any three or two of you, full power and authority to affign a new guardian for the aforefaid defendant the infant, by whom he may defend this fuit: And therefore we command you, any three or two of you, that at fuch certain day and place as you shall think fit, you go to the faid defendant, if he cannot conveniently come to you, and affign and appoint a guardian for the said defendant the infant; and when you shall have so done, that you certify the name of fuch guardian, and your having affigned and appointed fuch guardian, fairly and distinctly wrote upon parchment; and send the fame closed up under the seals of you, any three or two of you, unto us in our faid Chancery - wherefoever it shall then be, together with this writ. Witness, &c.

Indorse, By order of court.

A commission to take a lunatick's answer by his committees.

GEORGE the second, &c. To, &c. greeting. Whereas A. B. and others, complainants, have lately exhibited their bill of complaint before us in our court of Chancery against C. D. defendant: And whereas

whereas we have by our writ lately commanded the faid defendant to appear before us in our faid Chancery at a certain day now past to answer the said bill: but forasmuch as the said C. D. the defendant is a lunatick, and cannot answer the faid bill nor defend this fuit but by his committees affigned him in that behalf; Know ye therefore, that we have given unto you, any three or two of you, full power and authority, in pursuance of the special order of our faid court, to take the answer of the said C. D. a lunatick, by E. F. and G. H. his committees already affigned and appointed by him our faid court, to the faid bill; And therefore we command you, any three or two of you, that at fuch certain day and place, as you shall think fit, you go to the faid defendant, if he cannot conveniently come to you, and take the answer of the said defendant by the said E. F. and G. H. his committees already affigned and appointed, to the faid bill, on the corporal oaths of the faid committees upon the Holy Evangelists, to be administred by you, any three or two of you, the faid answer being diffinctly and plainly wrote upon parchment: And when you shall have so taken the faid answer, you are to fend the same closed up under the feals of you, any three or two of you, and this writ, unto us in our faid Chancery wherefoever it shall then be. Witness Ourself at Westminster the --- day of --- in the --- year of our reign.

Indorse, By order of court.

A special commission to divide lands.

GEORGE the third, &c. To A. B. C. D. E. F. and G. H. greeting. Whereas by a certain order bearing date the — day of — in the — year of our reign, and in the year of our Lord —, made and pronounced before us in our court of

of Chancery on hearing of certain causes between 7. K. plaintiff, and L. M. defendant, and between the faid L. M. plaintiff, and J. K. defendant, It was ordered and decreed that a commission of partition should iffue, directed to commissioners to be therein named, who were to divide the feveral lands and premisses therein mentioned, lying and being in -, &c. into moieties; and also to divide into moieties the faid feveral lands and premisses therein mentioned to be lying and being in -, &c. all which faid lands and premisses lie in the county of -, and late were the estate of N.O. Know ye therefore, that we, in confidence of your prudence and fidelity, have appointed you, and by these prefents do give unto you, any three or two of you, full power and authority at fuch time or times as you shall think fit and convenient, to enter into and upon, and to look over and view all and fingular the aforesaid lands, hereditaments and premisses in the faid order mentioned, lying and being in —, &c. and the same into two equal parts or moieties to divide, and the parts fo divided to distinguish and feparate by certain metes and bounds; and one moiety of the faid lands and premisses to allot unto the faid J. K. and his heirs, and the other moiety of the faid lands and premisses to allot unto the faid L. M. and his heirs and affigns, to the same uses upon which the undivided moiety thereof now stands limited by indentures of leafe and releafe, bearing date the — and — days of —; and also in like manner to enter in and upon, and to look over and view all and fingular the aforesaid lands, hereditaments and premisses in the said order mentioned, lying and being in -, &c. and the same into two equal parts or moieties to divide, and the parts fo divided to diffinguish and separate by certain metes and bounds; and one moiety of the faid lands and premisses in -, &c. to allot unto the said J. K. and and his heirs, and the other moiety of the faid last mentioned lands and premisses to allot unto the faid L. M. and his heirs: And therefore we command you, any three or two of you, to meet and affemble together at certain convenient days and hours which ye shall appoint for that purpose, to enter into and upon the faid lands, hereditaments and premisses, and to walk over and view the same: And if it shall appear necessary, we hereby impower and authorize you, any three or two of you, to examine feparately upon their oaths upon the Holy Evangelifts (which we hereby impower you, any three or two of you to administer) all such witnesses as shall be produced by the faid parties, or either of them upon fuch interrogatories, as they, or either of them, shall exhibit to you touching the matters aforesaid; and the examinations of such witnesses to the faid interrogatories to take in writing in parchment; and when you, any three or two of you, shall have taken such examinations or depositions, you are hereby, and by fuch other lawful ways and means as you can best discover the truth, to make fuch separate divisions of the aforesaid lands, tenements, hereditaments and premisses into two equal parts or moieties, and to separate, distinguish, and let out the respective moieties of such divisions from the other of them by proper metes and bounds; and to allot and appoint one of the faid moieties on each fuch division to the said 7 K. and his heirs, and the other moiety of the faid respective lands and premisfes in -, to the faid L. M. to the uses aforesaid; and the other moiety of the faid lands and premisses at ____, &c. to the faid L. M. and his heirs: And when you shall have done and performed these things, then are to return to us in our faid court of Chancery, in --- wherefoever it shall then be, a certificate of all your astings and proceedings in the premiffes, distinctly and plainly wrote on parchment, together e

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together with the faid depositions, interrogatories, and this writ closed up under the hands and seals of you, any three or two of you: And we further command you, and every of you, that before you act in, or be present at the swearing or examining any witness or witnesses, you do severally take the oath first specified in the schedule hereunto annexed; And we give you, any three, two, or one of you. full power and authority, jointly or feverally, to administer such oath to the rest or any other of you upon the Holy Evangelists: And we further command, that all and every the clerk or clerks employed in taking, writing, transcribing, or ingroffing the deposition or depositions of witnesses to be examined by virtue of these presents, shall, before he or they be present at such examination, severally take the oath last specified in the schedule hereunto annexed; and we also give you, or any one of you, full power and authority jointly or separately, to administer such oath to such clerk or clerks upon the Holy Evangelists. Witness, &c.

Writ of affistance.

GEORGE the third, &c. To the sheriff of L. as well at present as for the future, greeting. Whereas according to the tenor and true meaning of our writ of execution of a decree, and also of our writ of injunction made out and iffued under our great seal of Great Britain, in a certain cause depending in our court of Chancery, between A. B. and E. his wife, plaintiffs, and C. D. defendant, the faid C. D. was decreed and injoined to deliver polfession to the said A. B. and E. his wife, of the melluage, lands and premisses in the pleadings in the faid cause mentioned; yet he the said C. D. and other ill disposed persons his accomplices, have refused to pay obedience thereto, and detain and keep the the possession of the said messuage, lands and premisses, in manifest contempt of Us, and our said court: Know ye therefore, that we being willing and defirous that justice should be done to the said A. B. and E. his wife in this behalf, do give unto you full power and authority to place and put the faid A. B. and E. his wife, and their affigns, without delay, into the full, peaceable and quiet posfession of all and singular the said messuage, lands and premisses, with their appurtenances; and from time to time, as often as there shall or may be occasion, to maintain and keep them and their assigns in fuch peaceable and quiet possession, according to the intent and true meaning of the faid decree and injunction of our faid court; and therefore we do hereby command and injoin you, that immediately after your receipt of this our commission, you do go and repair and enter into and upon the faid messuage, lands and premisses, and that you do remove, eject and expel the faid C. D. his tenants, fervants and accomplices, each and every of them, out of and from the faid meffuage, lands and premisses, and every part and parcel thereof; and that you do place and put the faid A. B. and his wife, and their affigns, into the full, peaceable and quiet possession thereof, and defend and keep them and their faid affigns in fuch peaceable and quiet poffeffion, when and as often as any interrruption may or shall from time to time be given, or offered, to them or any of them, according to the true intent and meaning of the faid decree and injunction: And herein you are not in any wise to fail. Witness, &c.

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Indorse, Writ of affistance.

B. and his wife against D.

CHAP. XI.

Inferrogatories.

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Interrogatories for a proof of a will. Vide Bill and Answer, ante.

Interrogatories to be administred to witnesses, to be produced, sworn and examined in a certain cause now depending and at issue in the high court of Chancery, wherein G. S. Esq. (an infant under the age of 21 years, by M. S. widow, his mother and next friend,) is complainant, and J. S. (an infant under the age of 21 years, by W. M. his guardian,) is defendant, on the part and behalf of the complainant, as follows.

1. O you know the parties complainant and defendant in the title of these interrogatories named, or either, and which of them, and how long have you known them respectively? And did you know J. S. Esq.; deceased, late father of the complainant and defendant, in his life-time, and how long did you know him before his death, and when and where did the said J. S. the father die, as you know or believe? Declare.

2. Do you know that the faid J. S. the father in his life-time did make his last will and testament in writing under his hand and scal; if yea, when and where did he so make the same, and how long before his death was the same made; Do the words following, (to wit) In the name of God, Amen, &c. [bere set forth the will verbatim] contain or express Vol. II. Dd the

the last will and testament of the said J. S. the father, as you know or believe? Declare

3. Do you know the paper or parchment writing now produced and shewn unto you, and marked with the letter (A); if yea, doth the same contain the last will and testament of the said 7. S. the fa. ther, as you know or believe; was you a witness to the faid will, and did you fee the faid 7. S. the father, fign, feal, publish and declare the same to be his last will and testament, or not, and is your name fubscribed as a witness thereto of your own proper hand-writing, or not? if yea, who were the witnesses thereto, and did you and the other persons, who are witnesses to the said will, subscribe your names as witnesses thereto in the presence of the said testator, and who were present at the executing of the faid will by the faid testator besides yourself and the other witnesses; and was the said testator, at the time of the executing of the faid will, of found mind, memory and understanding, as you know or believe? Declare.

4. Do you know of any other matter or thing that may tend to the benefit and advantage of the complainant in this cause? If yea, declare the same as fully as if you had been thereunto particularly interrogated.

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Interrogatories for examining of witnesses for proving of a deed and bond, and other matters relating to an estate in possession of the defendant.

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Interrogatories to be exhibited to witnesses, to be produced, sworn and examined in a certain cause depending and at issue in the high and honourable court of Chancery, wherein G. D. Gent. is complainant, and G. G. Gent. desendant, on the part and behalf of the said complainant, (as follows.)

these interrogatories above-named, or either and which of them? And whether did you know T. G. late of ____ in the county of ____ Gent. deceafed? And if yea, for how long did you know him, and when, and how long fince did the said T. G. depart this life? Set forth, and according to the best of your knowledge, remembrance and belief herein fully and at large declare.

2. Did you fee the parchment deed or writings now produced and shewn to you at this the time of your examination marked letter A. signed, sealed and delivered, and by whom? And whether is your name, and the name or names of the other person or persons, set as subscribing witnesses thereto, of your and their respective hand-writing? and whether was the consideration money, mentioned in the said produced deed or writing, paid or satisfied, and when, and by whom, and to whom? Set forth, and according to the best of your knowledge, remembrance and belief herein, with the reasons and circumstances thereof, fully and at large declare.

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3. Do you know the lands and premisses in the parchment deed or writing now produced and shewn to you, or any, and what part thereof? If yea, whether is the defendant G. G. in the receipt of the rents and profits thereof, or of any, and what part thereof? or who is in the possession thereof, or in the receipt of the rents and profits? Hath the faid defendant been in the possession thereof since the faid T. G.'s death? If yea, when did he take pofferfion thereof, and when did he quit the fame, and whether does the faid defendant claim or pretend any and what right and title thereto, or to any and what part thereof, and by and under whom, and in what manner, and by what means, and how? Set forth according to the best of your knowledge and belief herein, and the particular reasons and circum-

stances thereof fully and at large declare.

4. Did you fee the bond or paper writing, now produced and shewn unto you at this time of your examination, marked lett. B. figned, fealed and delivered, and by whom; and wh ther is your name, and the name or names of the other person or perfons, fet as subscribing witnesses thereto, of your and their respective hand-writing; and whether was the money, mentioned to be secured by the said produced bond or paper-writing, paid and fatisfied, and by whom, and to whom, and when and how and in what manner? Did the defendant by himself or any other person make application to the complainant to advance and lend T. G. deceased the obligor in the faid bond, any fum or fums of money? If yea, when and by whom and to whom was fuch application made, and by whose order? Set forth according to the best of your knowledge and belief herein, and the particular reasons and circumstances thereof fully and at large declare.

5. Was it at any time and when agreed by T. G. deceased, the obligor in the bond in the preceding interrogatory mentioned, and how and in what

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manner, that the faid bond or money thereby intended to be fecured should be a charge or chargeable upon or secured by any and what lands or estate? Set forth what you know or believe herein, and the particular reasons and circumstances thereof and relating thereto fully and at large declare.

6. Is there any other matter or thing which you know or believe to be necessary or material for the complainant to prove in this cause? If yea, set forth the same, and the particular reasons and circumstances of such your knowledge and belief thereof fully and at large declare.

Interrogatories for examining of witnesses, on the behalf of a defendant, for proving the execution of bonds, and money lent upon securities, &c.

Interrogatories to be administred to witnesses to be produced, sworn and examined on the part and behalf of G. G. Gent. one of the defendants to the original bill of complaint of G. D. Gent. complainant.

I. Do you know the parties complainant and defendant, or any and which of them; and how long have you known them, or any and which of them? Declare the truth and your knowledge therein.

2. Did you know T. G. late of — in the county of — deceased, and how long did you know him before his decease, and when or about what time did the said T. G. die? Declare the same as you know or have been credibly informed and believe.

3. Were the bonds or writings, now shewed unto you, and marked with the letters A. B. C. D. E. F. D d 2 or

or any and which of them, figned, fealed and delivered in your prefence, and by whom? Were you a witness to the figning, fealing and delivery of such bond or bonds, or not? Is your name, subscribed as a witness to the same, of your own proper handwriting, or not? Are you acquainted with the character or hand writing of the other subscribing witness or witnesses to the said bond or bonds, or any and which of them? Do you know their names subfcribed thereto to be of their own hand-writing, or not? Declare all that you know or verily believe

concerning the fame.

4. Do you know of any and what fum or fums of money that was or were lent and paid by the defendant G. G. or by any person or persons by his order, or on his account, to the faid T. G. in his lifetime, or to any other person or persons to or for his use, as the confideration for entering into and executing any and what lond or bonds, or judgment, or other and what fecurity or fecurities to the faid G. G. and when was the fame lent or advanced and paid? Or have you heard the faid T. G. acknowledge or declare any thing and what concerning the money due, or the confideration for which the faid bond or bonds were given? Declare all that you know or have been credibly inform'd and believe concerning the fame, with the reasons and circumstances that induce your belief.

5. Do you know of any and what fum or fums of money that was or were paid by the defendant G. G. or by any person or persons by his order, or on his account, to you or to any other person or persons, and whom by name, that was or were due from the said T. G. to you or to any, and what other person or persons on any and what bond or bonds, bills, notes, or any and what other security or securities, or account? If yea, set forth the particular time or times when the same was or were

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paid? Declare all that you know and have been credibly informed and believe concerning the same, with the reasons and circumstances which induce

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6. Do you know of any and what promise or offer that was at any time or times, and when and how often made by the defendant G. G. or by any person or persons, and whom by name, by his order or direction, or for or on his behalf, to the complainant G. D. to pay off, fatisfy and discharge any and what mortgage that was made by the faid T. G. in his life-time to the faid complainant G. D. of any and what estate in or near the town of in the faid county of ——— formerly the estate of G. G. deceased? If yea, did the said complainant accept of, or refuse or reject such offer or promise; or what did he fay or pretend or infift upon at the time or times of fuch offer or promise? Declare all that you know or have been credibly informed and believe concerning the matters inquired after in this interrogatory, with the reasons and circumstances which induce your belief.

7. Do you know of any and what bond that was entered into and executed by the faid T. G. in his life-time for the payment of the fum of feventy pounds and interest, or of any other and what sum of money to the complainant G. D? If yea, was you present when the said bond was executed, and did you see any and what sum of money advanced and paid to the said T. G. or to any person, and whom by his order or for his use, either before or at or after the execution thereof, as or for the consideration of the said bond? Declare all that you know

concerning the fame.

8. Do you know of any other matter or thing, or have you heard or can you fet forth any thing touching the matters in question in this cause, that may tend to the benefit and advantage of the defendant

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G. G.

G.G. besides what you have been before interros gated unto, if yea? Declare the same fully and at large, as if you had been thereunto particularly interrogated.

ries to examine creditors.

Interrogato- Between A. B. an infant, by his next friend, - complainants, and others -

> C. B. an infant, by bis guardian, others — defendants.

> Interrogatories exhibited before - Esq; one of the Masters of this bonourable court, to be administred to the several creditors of A. B. Esq; deceased, late father of the complainant A. B. and of the defendant C. B. in pursuance of the order made on the hearing of the faid cause.

1. ID you, or any and what person or persons J under whom you claim, at any time, and when, pay, lend and advance any and what fum or fums of money, or fell or deliver any and what goods or things to or for the use of the said A. B. in his life-time, or do any and what bufiness or work for the faid A. B. or how or in what manner, and upon what occasion, and for what, came he the faid A. B. to be indebted unto you, or unto fuch person or persons under whom you claim? Declare as you know and believe.

2. Did he the faid A. B. give, acknowledge or make unto any person, and whom, any and what fecurity or fecurities for all or any and what part of fuch monies fo lent and advanced, goods or things fold and delivered, or business or work done, or any of them as aforefaid, or otherwise and how? Was or were the fecurity or fecurities, if any, fo given, or executed at the time they respectively bear

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cular ? Declare, &c.

3. Was all and every, or any and what part of the money in the faid fecurity or fecurities mentioned or intended to be fecured thereby, or which you now claim or pretend to be due to you, really and truly lent, advanced and paid to the faid A. B. or any other person, and whom, for his use, and where, and when, and at what times respectively, and by whom and in whose presence? Did or did you not for any time, and how long, keep back or retain all or any, and what part thereof in your hands, or in the hands of any other person, and who by name, by or with your privity, and why and upon what occasion? Declare according to the best of your knowledge and belief herein.

4. Was and were the goods and things, or the business or work for which the said security or securities (if any) were given, or for which you now claim payment or satisfaction, really and truly sold to, or done or performed for the said A. B. and by his order, and by whom and when, and where respectively, and in whose presence, or otherwise and

how? Declare, &c.

5. Have you, or any other, and who by name, with your privity and confent or direction, or for your use, or in trust for you, at any time or times, and when, and in any and what manner, and where, and in whose presence, or otherwise, had or received, or been allowed, or have set off, or ought, as you know or believe, or can recollect, to allow, deduct or set off any and what sum or sums of money, or any other and what payment, satisfaction, deduction or allowance, and how and in what manner, and by what means, of or for, or towards any and what part of the money in the said security or securities mentioned or intended to be thereby secured, or otherwise claimed or pretended to be due to

you, by or from the faid A. B. or his estate? How much after all just allowances and deductions is really and truly now owing and remaining due to you by the laid A. B. or from or out of his estate, upon the laid tecurity or securities as aforesaid, or any and which of them, or otherwise, and how and why? Declare according to the best of your know-

ledge and belief

6. Was or were any and what judgment or judgments entered up against the faid A. B. in his lifetime, in any and what court or courts, at the fuit of any persons, and whom, or any and what debt or debts fum or fums of money, due or owing by or from the faid A. B. in his life-time, at any time or times, and when in particular, affigned to you, or any person and whom, in trust for you? Did you at the time of affigning any fuch judgment, debt, or fum, or at any other and what time, pay the person affining the said judgment or judgments, debt or debts, sum or sums of money, or any other person, and whom for his or their use, any and what fum or fums of money for or in confideration of fuch affignments respectively? Was or were the tum or fums of money mentioned in the refrective affigrments of such jud ments, debts and monies, to have been paid as the confideration of such respective affignments, and every part thereof, or any other and what fum really and truly paid and advanced by you, for or upon account of fuch affignments respectively; or did you return or pay back any and what part of fuch fum or fums of money to the person or persons who so affigned the faid judgment or judgments, debt or debts, fum or fums of money, or not? Declare.

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lue as by Between C. B. — plaintiff, C. D. and other defendants.

An interrogatory for the complainant's examination, pursuant to the decree made in this cause.

TAVE you, or any other and what person or persons, and who by name, at any time or times, and when, had or made, or caused to be had or made, and by whom, or been at any time or times, and when and where prefent, at the making of any and what inventory or appraisement, inventories or appraisements, of all and every, or any and what part of the goods and chattels, credits and personal estate of A. B. deceased; and what is become thereof, and of every part thereof; and where, and in whose hands or power is or are now, or late was or were the fame, as you know or believe? Whether was any or what part of the goods, chattels, credits, things and personal estate of the faid A. B. and of what kinds and qualities respectively, omitted out of, or neglected or refused to be inferted in fuch inventories and appraisements, or either and which of them, as you know or believe; and if by your privity or not, or by or with the order, privity or direction of any other, and what person or persons, as you know or believe? Whether was any and what part or parts of the goods and particulars mentioned in fuch inventories or appraisements, or either and which of them, any wife, and how much in each particular undervalued, and appraised below the real values thereof, as you know or believe; and was the fame done by the direction or approbation or with the privity of you, or any other person or persons, and whom, as you know or believe? What was or were the full, utmost an real value and values of all and every such particular and particulars, as was or were so undervalued or omitted, as you know or believe?

CHAP. XII.

. Of the proceedings upon a commission of lunacy.

A ND first a lunatick, as before is observed in vol. 1. fo. 241. is a person who is sometimes of good and sound memory and understanding, and sometimes not; aliquando gaudet lucidis intervallis.

A d the foundation for finding him a lunatick is, that he is not capable of the government of himself or his estate. But it is not sufficient for the jury to find him of so weak an understanding, as to be incapable of managing his estate, without saying he

is a lunatick, or of an unfound mind.

The method of procuring the commission is first by two or more persons making an affidavit, setting forth the ate and condition of the lunatick, with some few instances of his declarations and actions, to shew their belief of his being a lunatick, and incapable of governing himself or his estate. D. fay

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The affidavit may be in this manner.

E. F. G. H.

Sworn the — day of — 1744 at the publick office before

Then you must prepare a petition to the Lord Chancellor, the form whereof may be as follows:

The petition.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of A. B.

Sheweth,

HAT C. D. of, &c. [name the lunatick, with his addition] your petitioner's fon [or what ether relation he is] now is, and for the face of

months last past and upwards has been, so far deprived of his reason and understanding, that he is rendered altogether unsit and unable to govern himself, or to manage his affairs, as by the affidavit annexed appears.

Your petitioner therefore most humbly prays your Lordship will be pleased that a commission in nature of a writ De lunatico inquirendo may issue out of this honourable court, to enquire of the lunacy of the said C. D. directed to such persons as your Lordship shall think sit.

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And your petitioner shall ever pray, &c.

This petition, with the affidavit annexed, is lodged with his Lordship's secretary of the lunaticks,

who will get it answered for you.

And if the commission is to be executed in the country, you must give in commissioners names to the secretary, which list must contain the names of sive persons, two or three of them barristers, and the others attorneys, or such as the Lord Chancellor will approve of, which the secretary will inform you; but if the lunatick lives in or near London, there are commissioners for that purpose appointed, and when you have procured the petition answered, you carry it to Mr. Hammersley, who officiates as clerk of the custodies, and he will thereupon make out the commission, for which you pay him 31. 75. 6 d.

N. B. Where in the country, upon entring a caveat with the fecretary, for which you pay 55. with proper allegations, the person against whom the

com-

commission is prayed will have leave given him to present a list of commissioners as well as the party applying. And Q, whether he may not likewise

pray a special jury as in common cases.

The commission being obtained, you appoint a place for the execution thereof, which, according to Lord Chancellor's order, ought to be near the place of the supposed lunatick's abode, and then you prepare a summons or precept, which is in nature of a Venire facias, directed to the sheriff of the county, in which the commission is to be executed, as follows:

The precept to the Sheriff.

Y virtue of a commission in nature of a writ De lunatico inquirendo under the great le 1 of Great Britain, bearing date at West inter &c (the date of the commission) to us, whole names are here under-written, and others in the same commission named, directed, to inquire whether C. D. of, &c. be a lunatick or not; These are therefore to will and require you to cause to come and appear before us twenty-four honest and lawful men of the city and liberty of Westminster, on the 25th day of May next, by ten of the clock in the forenoon of the same day, at the house of 7. K. situate in a certain street or place there, called Piccadilly, and commonly called or known by the name or fign of the Gun Tavern; then and there upon their oaths to inquire of the lunacy of the faid C. D. and of all fach other matters and things as shall be given them in charge by virtue of the faid commission; and therefore fail not at your peril. Given under our hands and feals the 30th day of April in the 17th year of the reign of our Sovereign Lord George the Second, by the grace of God, of Great Britain, France France and Ireland King, Defender of the Faith; &c. and in the year of our Lord 1744.

To the sheriff of the county of Middlesex, or his deputy.

This you carry (having put three feals thereto) with the commission to such three of the commissioners as you shall think proper, who will sign and seal it, for which you pay them one guinea each, and then lodge it at the sheriss's office; and the jury ought to be of the town or neighbourhood where the lunatick lives.

If the lunatick is in custody of any person who you are apprehensive will not voluntarily produce him (for he must be present and examined by the jury viva voce) then you make out a warrant for

that purpose, as follows.

A warrant to produce the lunatick.

By virtue, &c. (as before to) These are to will and require you to produce before us the said C. D. at the execution of the said commission on, &c. (as in the summons) there to be examined touching the matters aforesaid, and you are to give him notice of it accordingly; as also to any other person or persons who are guardians of him or trustees of his estate, that they may appear in his defence, if they shall think sit. Given under our hands and seals, &c.

To Mr. L. M. or such other person or persons as now have the said C. D. in their custody or power.

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The commissioners sign and seal this warrant without any see, and then you are to make copies thereof, and serve it upon such persons as you believe, or can make appear, have the custody of his person, or the direction and management of him or his estate at the time of service, shewing the original.

But, in order to make the person who has the custody of the supposed lunatick liable to a contempt, and to enforce the producing of the person of the supposed lunatick to the commissioners and jury, it is best to apply to the Lord Chancellor for

an order for that purpole.

Also if you apprehend the witnesses, or any of them, will not voluntarily attend, you make out a subpana as follows.

The subpæna for witnesses.

Py virtue, &c. (as before to) These are to will and require you, that you personally be and appear before us on, &c. (as in the summons) then and there upon your oath to testify the truth according to your knowledge touching the lunacy of the said C. D. and of all such matters and things as shall be demanded of you by virtue of the said commission. Hereof sail not at your peril. Given under our hands and seals, &c.

To A. B. C. D. &c.

This the commissioners also sign and seal gratis, and then you make copies thereof, and serve it upon the witnesses, shewing them the original.

Note, That the precept, warrant and fubpana, need not be upon stamped paper or parchment.

Vol. II. E.e. Upon

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Upon the day of executing the commission, you must take care to have your witnesses ready, and the lunatick, attending the commissioners; and the jury being all fworn, then you proceed to take the

inquisition thus, viz.

In the first place, you must read over the commission, and then the commissioners will proceed to examine the witnesses, and afterwards the lunatick (if necessary); but the lunatick may insist on being examined, the commissioners and jury only

being present.

Having gone through with the proofs, the chairman, or first commissioner, sums up the evidence and facts to the jury, who thereupon give their verdict as in other cases, and after the jury have given in their verd ct, you fill up the blanks of the inquifition, (which, for expedition fake, is generally prepared before hand with large blanks) according to the inquest, and then you read it over to them for their confent, which is to be figned both by the commissioners and the jury.

Note; Counsel may attend at the execution of

these commissions.

The form of an inquisition.

A commiffion of lunacy must not be ipemust be found mad, or not mad, 47.

N inquisition taken at the house of Midd. ff. place there called Piccadilly, and commonly called tuned; he or known by the name or fign of the Gun Tavern in the county aforesaid, the 25th day of May in the 17th year of the reign of our Sovereign Lord S. C. Chan. George the Second, by the grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. and in the year of our Lord 1744. before L. M. N. O. Efgrs. and P. Q. Gentleman, his faid Majesty's commissioners, by virtue of a comcommission in nature of a writ de lunatico inquirendo under the great seal of Great Britain, bearing date at Westminster the 12th day of April last past, to them the faid commissioners and others in the said commission named directed, to inquire (amongst other things) of the lunacy of C. D. of, &c. upon the oaths of T. U. &c. (insert the names of all the jurors) good, honest and lawful men of the faid county of Middlesex, who being sworn and charged upon their oaths fay, that the faid C. D. is at the time of taking this inquisition a lunatick, (or of an unfound mind) and doth not enjoy lucid intervals (as the jury find bim) fo that he is not capable of. the government of himself, his manors, messuages, lands, tenements, goods and chattels, and that he hath been in the same state of lunacy for the space of - last past, and upwards; but how or by what means the faid C. D. fo became lunatick the jurors aforesaid know not, unless by the visitation of God: And the same jurors upon their oaths further fay, That they do find that the faid C. D. at the time of taking this inquisition, is seised of or intitled unto one meffuage, &c. (the premisses be is found seised of or intitled unto) which descended to him as, &c. And also that the said C. D. hath not alienated any of his lands or tenements during his lunacy aforesaid, to the knowledge of the same ju-And the same jurors upon their oaths further fay, That the faid C. D. is, at the time of taking this inquisition, also possessed of or intitled unto (set forth what personal estate). And lastly, the fame jurors do find, that G. H. of, &c. is brother and nearer heir to the faid C. D. and that the faid G. H. at the time of taking this inquisition, is of the age of - or thereabouts. In testimony whereof, as well the faid commissioners, as the jurors aforesaid, have to this inquisition set their hands and feals the day and year first above-written. This Ee 2

This inquisition is generally writ sheet-wise on unstamped paper, and is signed by the commissioners and all the jurors, &c. on which you pay to the commissioners, if in town, two guineas each, and to the jury half a guinea a-piece, to the sheriss two guineas, and to the summoning bailiss one guinea; but in the country it is usual to give more, and pay the sheriss the same as you do the commissioners.

Then you must prepare an ingroffment of the inquifition upon parchment, stamped with a treble fixpenny stamp, and annex it to the commission, which you return, on the back, writing these words. "The execution of this commission appears by the in-" quifition bereunto annexed", which the commisfioners fign, and then fixing labels and feals to the bottom of the inquisition, three for the commisfioners on the left hand fide, and likewise one for every one of the jurors, you carry it with the commission annexed, and the inquisition (which was figned by the commissioners and jury at the time of taking) to the commissioners, who will fign the return of the commission, and sign and seal the inquisition, for which you pay them one guinea each; but there is no occasion for the jury to sign this ingroffment.

When you have thus compleated your inquisition, you must carry it to the petty-bag office to be filed, where they make you an office copy of the commission and inquisition upon double sixpenny stamped paper, which you make use of on all occasions, either in court or otherwise; for which you pay the following sees, viz. slling 2s. 6d. copying 8d. per

fheet, and figning the copy 25.

Upon this, some near relation or friend petitions for the custody of the lunatick's person, and in the same petition the person, who will be intitled to his real or personal estate at his death, prays the

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lar be qu care and management of the lunatick's estate and effects.

But the custody of the person is seldom or never granted to those who are to take his estate immediately upon his death, but generally to the nearest relation, who hath no right to his estate.

The petition for the custody of the person, and the care and management of the lunatick's estate.

In the matter of C. D. a lunatick.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of A. B. of, \mathcal{C}_c . and G. H. of, \mathcal{C}_c .

Sheweth.

THAT pursuant to your Lordship's order of the 1st day of April last past, made upon the petition of your petitioner A. B. a commission in nature of a writ De lunatico inquirendo was issued out and directed to certain commissioners therein named, to inquire of the lunacy of C. D. of, &c. who is second son of your petitioner A. B. and sirst brother of your petitioner G. H. (as the case is).

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feifed of or intitled unto a confiderable real and personal estate, and that your petitioner G. H. is brother and nearer heir to the said C. D. the lunatick, and at the time of taking the said inquisition was of the age of —— years.

That your petitioners being defirous that the perfon and estate of the said lunatick may be duly taken care of, in such manner as is necessary and usual in

cases of this nature.

Your petitioners therefore most humbly pray your Lordship, that the care and custody of the person of the said lunatick may be granted to your petitioner A. B. and that the care and management of his estate may be granted unto your petitioner G. H. he giving such security as is usual in the like cases.

And your petitioners shall ever pray, &c.

This petition you lodge with the secretary of the lunaticks, and if his Lordship answers it in the affirmative, the committee of the person may demand the lunatick in whose custody soever he be; and the committee of the estate having entered into a recognizance with sufficient sureties before a Master; the clerk of the custodies will procure the commitment of his estate under the Great Seal.

But Note, that the person who is found a lunatick, or any person on his behalf, may nevertheless enter a Caveat with the secretary against the petition for the commitment of his person and estate, and may then petition the Chancellor, that the commission may be superfeded upon his being inspected and examined in open court; which his Lordship will answer accordingly, and appoint a day for that purpose, against which time the lunatick should procure

procure affidavits of two or three of the most eminent physicians, with regard to his fanity and capacity of being able to take care of himself, and manage his estate; for the court will not, without pretty strong evidence, superfede the commission

after he is found a lunatick by the jury.

A commission was granted to inquire of the ideocy or lunacy of the Lord Wenman (an Irish Lord) and they who had him in cultody refuling to produce him before the commissioners, Lord C. Macclesfield ordered him to be produced; whereupon after great delays, and after Lord Wenman's Lady, (an Irish peeress) had been ordered to attend, and it also appearing by affidavits that she had been with her husband, and been instrumental in removing him from place to place in order to evade his being produced, his Lordship ordered the Lady to be committed to the Fleet, faying, it was great impudence as well as obstinacy in her, not to do what fhe could for the producing her husband, who upon the affidavits that had been made could not but be thought a lunatick. I Will. Rep. 701. Lord Wenman's cafe.

Motion that a lunatick who had recovered his understanding might be inspected, and make a settlement of his estate —— Lerd Keeper resused to make any order in it, but directed that if he (the lunatick) made any settlement, it should be done before the justices of the Common Pleas by sine, that they might examine him; and directed that as he was found a lunatick on record, they should reply to it, that be was now restored to his understanding, that so issue might be taken upon it and tryed in C. B. 1 Vern. 155.

Upon application to be committee of the perf n, though it is not usually granted to the next of kin, yet where his estate is personal, and may be improved by the continuance of his life, it is no ob-

E e 4 jection.

jection. Peer Will. 544. Neal's case.—And it is no objection with regard to a person who may be intitled to a distributive share of the lunarick's personal

estate. Ibid. 635. Ex parte Ludlow.

The custody of the lunatick's estate was granted to baron and seme, she being next of kin: The wise dies, the husband's right to the custody of the lunatick's estate is determined, it being a joint grant and a mere authority without any interest. Ca. in Eq. Temp. Talb. C. 143.

A committee may request an allowance for the lunatick's children, as in the case of Foster and Merchant, 1 Vern. 262. where it was requested for the lunatick's son, and referred to the master to see

what was a proper maintenance.

If a committee invests the lunatick's personal estate in a purchase of lands in see, this shall be taken as personal estate, and in case of the lunatick's death, shall go to his next of kin, and not to his heir. Awdley versus Awdley, 2 Vern. 192.

Actions touching lunatick's lands shall be in his own name, for there is no interest gained in the land by the commitment, and the Lord hath no power over the lunatick's lands without a custom. Kocks

against Darfon, Hob. 215.

A bill will not lie in the lunatick's life-time to perpetuate the testimony of witnesses to his will made before his lunacy. Sackwill versus Ayleworth, 1 Vern. 105.

The courts above will grant no prohibition to probate of a will of lands and goods, on suggestion of non compos in the testator, 2 Salk. 552. because it

is a matter triable at common law.

A lunatick is never to be looked upon as desperate or irrecoverable, and his comfort is to be regarded, and not his administrators or next of kin. Justice Dormer's case, Will. Rep. 264.

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A woman that was found an ideot by inquisition, prayed by herself, and council, that she might have leave to traverse the inquisition; and the Lord Chancellor King after asking her several questions, made an order accordingly, upon condition she should appear in person at the said trial, at the next assizes, or whenever they brought it on. Moseley 71. pl. 44. Anon.

Mr. Bumpton's two fifters were appointed committees of his personal estate, and they now joined with him in a petition, that the commission might be fuperfeded, the inquisition quashed, and the bond vacated, the lunatick being recovered of his indifpofition, and he appeared in court, and was examined by the Lord Chancellor King, but his Lordship doubted whether he could vacate the recognizance of the committees, because it did not appear judicially to the court, that they had performed the condition, and asked the opinion of the Attorney General, who thought it might be done, and that it fufficiently appeared the condition was performed, because Mr. Bumpton, who was the only person interested, was in court, and had declared himself well fatisfied, that his fifters had done their duty and given him a fair account. And an order was made according to the prayer of the petition. Moseley 78. pl. 49. ex parte Bumpton.

Earl Ferrers petitioned the court that the inquifition might be quashed, the commission of lunacy superfeded, and that he might have his liberty, being restored to his senses; and he appeared personally in court, with his sister Lady Be ty Shirley, the committee of his person, and Doctor Monroe his physician, who made an affidavit, that the earl was restored to his senses for four or sive months last past; and being examined likewise in court, he declared he believed there was no danger of a relapse, because he was greatly afraid of running into any

excesses,

excesses, which might bring on a return of his diforder, which physicians always looked upon as a very good symptom; but this petition was opposed by Mr. Lawrence Shirley, brother to the earl, and the committee of his estate, because the inquisition found him a lunatick with lucid intervals, and the furgeon, and apothecary, who formerly attended him, made affidavit, that after a falivation by Doctor Hale, he had enjoyed his fenses for a longer time, and yet relapfed; upon which the doctor gave him over as incurable, and that fince that time, whilft he was under the care of Doctor Lewis, he enjoyed a fanity of mind for feveral months after a violent fever, and yet his diffemper returned, and therefore his council humbly fubmitted to his Lordship, whether it was not more adviseable, only to suspend the commission 'till after the fall of the leaf, to see whether his recovery was perfect or not; and mentioned the case of Mr. Vincent, a Yorkshire gentleman, where his Lordship had made the like order. And the Lord Chancellor made an order, that the earl should have his full liberty, but that the Cassetur of the inquisition, and the supersedeus of the commission, should be suspended 'till the first day of petitions before Michaelmas term. Mosely 332. pl. 183. ex parte Ferrers.

Laches cannot be imputed to the heir being lunatick, nor can mean rates run against him; and livery being due to him, the law presumes that he would have sued it, being for his benefit, if he had been compos mentis. Burcher's case, Hob. 137.

If a lunatick kill a man, or the like, it is not felony; for felony must be done animo felonico; yet in trespass, which only tends to give damages according to the hurt or loss, it is not so; and therefore if a lunatick hurt a man, he shall be answerable in trespass. Weaver versus Ward, Heb. 134.

[For more concerning lunacy, vid. 2 Vol. Abr.

Eq. 580.]

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